NEWFOUNDLAND AND
LABRADOR

The
Royal Commission of Inquiry into the Response of the Newfoundland Criminal Justice System to Complaints

Report of the Commissioner
The Honourable
S.H.S. Hughes, Q.C.

VOLUME ONE

Royal Commission of Inquiry into the Response of the Newfoundland Criminal Justice System to Complaints

Volume One: Report

The Honourable
S.H.S. Hughes, Q.C.
Commissioner

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VOLUME ONE

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TO HIS HONOUR
THE LIEUTENANT GOVERNOR IN COUNCIL

May it please your Honour,

I, Samuel H.S. Hughes, appointed a commissioner under the *Public Enquiries Act*, R.S.N. 1970, c.314 by Letters Patent issued pursuant to an Order in Council dated the 1st day of June, 1989 to inquire and report as therein directed

BEG TO SUBMIT TO YOUR HONOUR MY REPORT

93-00669/

ELIZABETH THE SECOND, by the Grace of
God of the United Kingdom, Canada
and Her Other Realms and Territories
QUEEN, Head of the Commonwealth,
Defender of the Faith.

LIEUTENANT-GOVERNOR

ROYAL COMMISSION OF ENQUIRY
INTO THE
CRIMINAL JUSTICE SYSTEM

EXHIBIT #: C-0001

DATE ENTERED: 89-06-28

REC'D BY:

Minister of Justice

COMMISSION

TO:

HONOURABLE SAMUEL HUGHES

WHEREAS it appears desirable and expedient in the public interest and in the interest of the administration of justice that an Inquiry be held relating to an investigation conducted by the Royal Newfoundland Constabulary into allegations of child abuse at Mount Cashel Orphanage in the year of Our Lord, 1975, and in relation to two police reports, dated December 18, 1975, and March 3, 1976, respectively, and into the handling of the said investigation by the Royal Newfoundland Constabulary and by the Department of Justice;

AND WHEREAS there have been suggestions made that there existed within the Department of Justice a policy that criminal charges would not be laid in some cases of physical or sexual abuse of children, where the alleged assailants agreed to leave the Province of Newfoundland;

AND WHEREAS recent investigations have resulted in a substantial number of charges being laid, particularly against members of the clergy, relating to incidents dating back in some cases to the year 1970;

NOW KNOW YE that under and by virtue of The Public Enquiries Act, Chapter 314 of the Revised Statutes of Newfoundland, 1970, by and with the advice of our Executive Council of the Province of Newfoundland, reposing our great trust and confidence in your knowledge, integrity and ability, have constituted and appointed and do by these Presents constitute and appoint you the said

SAMUEL HUGHES

to be a Commissioner to hold an Inquiry into the matters following, without limiting the generality of the foregoing, and any other matters associated therewith, that is to say:

1. to inquire into an investigation by the Royal Newfoundland Constabulary into a complaint or complaints of child abuse alleged to have been committed at Mount Cashel Orphanage in St. John's which culminated in two police reports, which were prepared and dated December 18, 1975, and March 3, 1976, respectively, and in particular to determine:

   (a) whether the police investigation was carried out in accordance with accepted police policies;

   (b) whether the police policies were proper and adequate to ensure that the police investigation was thorough and complete;

(c) whether any person or persons impeded or obstructed any police officer in the investigation of these matters;

(d) why and at whose direction the police reports dated December 18, 1975, and March 3, 1976, were prepared;

(e) whether either or both police reports contained sufficient information to cause the Royal Newfoundland Constabulary to swear informations alleging breaches of the Criminal Code against any person or persons;

(f) whether the police reports were received and acted upon by officials of the Department of Justice and if or whether the files were handled in the normal manner;

(g) when, how and by whom this file was concluded and which person or persons in the Department of Justice, the Royal Newfoundland Constabulary or elsewhere were responsible for this action;

(h) whether any bargain was made by any person acting on behalf of the Crown or the police with any member or members of the Irish Christian Brothers or any other person not to proceed with criminal charges and, if so, the terms of such bargain;

(i) whether any report of child abuse was made to a Social Worker, the Director of Child Welfare, or any other official of the Department of Social Services by any person in accordance with the requirements of The Child Welfare Act, and if not, why not; if so, was it acted upon?

II. To enquire into the then prevailing policy or practices of the Department of Justice and the Department of Social Services with respect to allegations of physical or sexual abuse of children and, in particular, to determine

(a) whether there was a policy or practice of suppression of such allegations where the alleged assailants agreed to leave the Province of Newfoundland, and, if so, whether such policy related solely to the incidents at Mount Cashel and, if not, for how long that policy continued and to what extent was it applied;

(b) if such a policy or practice existed, whether it was applicable to areas of the Administration of Justice other than incidents of physical or sexual abuse of children;

(c) whether such a policy or practice was justified or appropriate.

III. Whether existing Police and Government Departmental policies are sufficient and proper to prevent avoidance of the due process of law in instances of allegations of physical or sexual abuse of children.

IV. To determine what measures or policies, if any, should or could be implemented to prevent a recurrence of the events which gave rise to this Inquiry.

AND FURTHER, WE REQUIRE YOU, THE Commissioner, to bring forward conclusions and any recommendations which you consider desirable to further the administration of justice.

AND WE DO, by these Presents, confer upon you, the said Commissioner, the power of summoning before you any witness or witnesses and of requiring such witnesses to give evidence orally or in writing upon oath or upon affirmation, and to produce such documents, submissions and things as you the said Commissioner may deem requisite to the full investigation of matters you are appointed to enquire into;

AND WE DO, by these Presents, authorize you, the said Commissioner, to adopt such procedures and methods as you, the said Commissioner, may from time to time deem expedient for the proper conduct of the Inquiry, and to sit at such times and places in public forum as you may from time to time decide PROVIDED HOWEVER that express authority is hereby given to hold in camera hearings where, but only where, you deem it necessary to obtain thorough, truthful and complete testimony from witnesses.

AND FURTHER, We require you to report your findings within ninety days of the commencement of Hearings.

IN TESTIMONY WHEREOF, We have caused these Our Letters to be made Patent and the Great Seal of Newfoundland to be hereunto affixed.

WITNESS: Our trusty and well-beloved the
Honourable James A. McGrath, Member of
Our Order of Canada, Lieutenant-
Governor in and for Our Province of
Newfoundland.

AT OUR GOVERNMENT HOUSE in Our City of
St. John's, this 1st day of June in the
year of Our Lord one thousand nine
hundred and eighty-nine and in the
thirty-eighth year of Our Reign.

BY COMMAND,

REGISTRAR GENERAL

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Introduction

I retired as a judge of the Supreme Court of Ontario according to the Constitution on the seventy-fifth anniversary of my birth, or October 24, 1988, and late in March 1989 I was approached indirectly and later directly by the Honourable Lynn Verge, Q.C., Minister of Justice and Attorney General of Newfoundland and Deputy Premier in the Government of Newfoundland and Labrador, to undertake the inquiry which is the subject of this report. The appointment of counsel and other matters were settled between us and David C. Day, Q.C. of the bar of Newfoundland and Clay M. Powell, Q.C. of the bar of Ontario decided upon. A minute of the Order in Council appointing these gentlemen and myself was dated on April 14, 1989. Thereafter our dealings were with the Deputy Minister of Justice, Ronald J. Richards, Q.C. and his officers as the minister became increasingly preoccupied with the general election campaign. Mr. Powell and I flew from Toronto on April 18 to confer with Mr. Day and with Herbert A. Vivian, Executive Secretary designate to the Royal Commission, a senior officer of the Department of Justice and former member of the Royal Canadian Mounted Police. The date for the first organization meeting of the commission was set for May 8, 1989. Mr. Powell and I returned to Toronto on April 20 at which time the government of the day was defeated at the polls.

The new ministry was as committed as its predecessor to the establishment of an inquiry into the response of the administration of justice and social services to complaints emanating from residents of Mount Cashel Orphanage and other sources, and indeed pledged to enlarge its scope, but naturally required time to consider to what extent it would adopt the terms of reference contained in the commission issued to me under the great seal of Newfoundland and dated March 31, 1989. In due course this was superseded by a new commission dated June 1, 1989 which is reproduced at the front of this report. While the earlier document is not reproduced it is desirable to point out the differences in emphasis and detail contained in its successor.

These documents are divided after preamble into articles I to IV in the case of the version of June 1 and articles I to III in the case of that of March 31, 1989. The opening recital in both are the same. To the second of June 1 has been added the second and third recitals now appearing, the fourth recital being identical with the first of March 31. The first words of article I *"to inquire into..."* are the same in both documents and paragraphs (c), (e) and (g) of the second are identical with paragraphs somewhat differently identified in the earlier version. Paragraph (a) discarded the words *"then prevailing"* which originally followed *"police policies"*. Paragraph (b) is new while paragraph (d) has added the police report of December 18, 1975 to the former reference only to that dated March 3, 1976. In paragraph (f) of article I the reference to files has been changed to *"handled in the normal manner"* from *"registered in the Department in the normal manner"* and in paragraph (h) the words *"if so, the terms of such bargain"* have been substituted for *"in return for any reciprocating action"* with a notable improvement in style. In the March 31 version paragraph (j) reads as follows: *"whether the Director of Child Welfare was aware of the allegations investigated by the police in 1975, and if so, how he was made aware of these matters and what actions, if any, were taken."* This was discarded for the existing paragraph

(i) of article I of the current terms of reference. Article II is wholly new and greatly enlarges the original charge. Article II of the earlier version which required recommendations as to compensation which might be paid to the complainants was removed; article III is new and article IV of the present version is the same as article III of its predecessor.

For the rest nothing was changed except the final paragraph which at March 31 read *"AND FURTHER, we require you to report your findings with as little delay as possible"*, on June 1 altered to read in the final version *"AND FURTHER, we require you to report your findings within ninety days of the commencement of Hearings"*. In short order it became apparent that this change was unrealistic in view of the mass of evidence offered and uncovered and the provision was removed in its entirety by Order in Council 1166 of 1989, dated December 29, 1989.

Henceforth the commission's business with the Government was conducted with and through the Honourable Paul D. Dicks, Q.C., Minister of Justice and Attorney General in the Ministry headed by the Honourable Clyde Wells, Q.C., and his Deputy Minister Mr. James Thistle, Q.C.. The co-operation of government departments with its investigations in compliance with an Order in Council dated April 14, 1989 was abundantly forthcoming. A further Order in Council dated June 2, 1989 seconded Mr. Herbert Vivian to the position of Executive Secretary of the Royal Commission, provided it with a budget of $500,000, and authorized the acquisition of premises without the need for public tender, and the hiring of staff with preference for secondment from the public service. It was now possible to advertise in the Newfoundland Gazette and the provincial press June 28, 1989 as the date of the first organization meeting of the commission, setting out the terms of reference and inviting those who wished to seek standing to appear at its public hearings and participate in its proceedings. The site of this meeting was the commodious premises of the Public Utilities Board on Torbay Road in St. John's especially designed for the conduct of hearings of the type contemplated and kindly provided until a time in September when that body's requirements became paramount; thereafter the commission moved to premises at Exon House, Strawberry Marsh Road, which it occupied until the conclusion of the public hearings on June 29, 1990.

The transactions of June 28 and of August 14 to which the excess of business on the former day compelled adjournment, need not be itemized. A list of those who were granted standing on these and subsequent occasions is set out at the conclusion of this introduction. Suffice it to say that both co-counsel projected the work of the commission in their opening statements and two preliminary rulings were made by me; one of them involving the rejection of an application for funding by the province of the legal expenses of one of the complainants who had resided in the Mount Cashel Orphanage in 1975, after hearing submissions on the subject from him and from counsel for the provincial government. The public hearings of the commission began at Exon House on September 11, 1989.

This bald recital must not be allowed to conceal the amount of work undertaken under pressure to recruit staff and to prepare documents and witnesses for the smooth and continuous production of the work at those hearings. I have elsewhere acknowledged my debt to counsel and to the staff of the commission for their patience and devotion but I should say here that the task of breaking ground for an inquiry of this type is something which is difficult to describe without having had some share of the toil involved. I did not, but as a result of my experience with this and two previous Royal Commissions I have a healthy appreciation of the work that is necessary before the first witness is called. The production of evidence is the culmination of one task as much as the beginning of another; thereafter, the two are maintained concurrently, and in the case of this inquiry night was turned into day with some necessary pauses.

A word must be said about the record of these public hearings. A significant saving of cost to the public was achieved by the Executive Secretary securing an arrangement with Avalon Cablevision Limited to provide tapes recording the proceedings both audibly and visually without charge to the commission in exchange for the right to broadcast at pleasure. The practice of televising and transmitting a record of such proceedings has been gaining favour for some time and now is no longer viewed with unanimous disapproval. Nevertheless by dispensing with a written transcript of evidence prepared by shorthand reporters or other mechanical means it may be that the experience of this commission has been unique. Remarkable speed of retrieval of the evidence of witnesses has been secured through the use of video cassette recorders and computers, although a typewritten transcript is easier to use when scanning the evidence and selecting passages for reproduction. Eventually a selected passage has to be transcribed after computer-assisted searching of a tape reflected on the screen. On the other hand, should any misfortune overtake a commissioner in my situation, rendering him or her unable to complete the task, it is possible for another appointee not only to hear the evidence as given, but to see and observe the demeanour of the witnesses through this technological achievement. In any event I took copious notes throughout the 150 days on which evidence was given and submissions made, notes which I would only have taken at a trial where either an oral judgement or a charge to the jury was to be expected at the end of it. A combination of these and the audio-visual record made checking the accuracy of the former a matter of simplicity and dispatch.

Because of these arrangements for the provision of the record and its wide dissemination, contemporaneously by day with review by night, the public was surfeited with information and press, radio and television journalists were provided with accommodation in the commission's premises from which they could monitor the proceedings without attending the actual hearings. The incongruous result was that the capacious hearing-room was largely deserted except for counsel and participants engaged. In spite of the sometimes distressing nature of the evidence the public reaction remained calm and judicious throughout, the only possible exception, in the shape of a bombing threat early in the proceedings, having proved to be illusory.

* * *

In his report as commissioner of the *Commission of Inquiry Into the Use of Drugs and Banned Practices Intended to Increase Athletic Performance*[1] the Honourable Charles L. Dubin, Chief Justice of Ontario begins his comment on "the process" as follows and I can do no better than quote it and adopt it.

---

[1] Canadian Government Publishing Centre, Supply and Services Canada, 1990.

> **"The function of a commission of inquiry is not always understood. A commission of inquiry is not a trial. No one is charged with any criminal offence, nor is anyone being sued. There is, to use legal jargon, no *lis inter partes*. There is no dispute between parties as such, and no legal rights are determined. It is intended to be an independent, objective inquiry into the subject matters referred to it by the Order in Council pursuant to which it is established, with a view to ascertaining what has transpired, to identify the problem areas, to define the issues, and to seek a way of correcting the errors of the past so that they will not recur.**
>
> **There are no set rules governing the conduct of a commission of inquiry, and the procedure to be followed is determined by the Commissioner."**

It should be noted that throughout his report no attempt is made to refer to his commission of inquiry as a royal commission doubtless for the good and sufficient reason that it proceeded from an Order in Council exemplified by a minute of a meeting of the committee of the Privy Council approved by Her Excellency the Governor General and not as either a proclamation or commission issued in Her Majesty's name. It is only in the latter sense that a commission of inquiry can properly be called a royal commission as this one is, attested to by His Honour the Lieutenant Governor endorsed by the Minister of Justice and impressed with the great seal of Newfoundland. By this simple standard it becomes clear that the inquiry into the Donald Marshall Jr. prosecution established by the government of the province of Nova Scotia is not a royal commission even though the editors of that commission's report have apparently arrogated that title to its production. There are no doubt other examples, and some academic fun has been poked at the inconsistency of names for commissions of inquiry, some being named after their subject and others being named after the commissioner all at the whim of the press and the public. But on the propriety of the word "Royal" there can be no dispute.

The procedure adopted by me was not unusual and is, I believe, what is generally observed and applied in public inquiries of this type. Commission counsel prepare the evidence with the assistance of commission investigators; this includes interviewing all witnesses before they are called and acquainting them with the line of questioning which will be applied to them; commission counsel then call witnesses before the commissioner, the oath is administered and questions are put in reasonably close observance of the rules of court, although there is no strict exclusion of the use of the technique of cross examination by commission counsel at any time; finally any participant with standing either through counsel or in person is invited to put questions to the witness with commission counsel able in the end to put such as may clarify the additional evidence adduced. When all the commission's witnesses have been called and any which participants may wish to call, the time comes for argument by counsel and participants and for presentation of other forms of submission and the hearings conclude. This procedure, although closely analogous to what obtains in court, does not confine the commissioner to considering only the evidence that he has heard in public and I have been from time to time compelled to clarify some points in the oral evidence by making subsequent inquiries. Moreover, two witnesses were heard *in camera* as a result of a ruling made by me on

November 8, 1989 to be found at appendix E in Volume Two of this report.

* * *

Co-counsel to the commission were eminently qualified and a brief note should be made about their professional histories. Mr. Day was born in St. John's, attended Prince of Wales College, graduated from Memorial University in 1964 and from Dalhousie University Law School in 1967 being called to the bar of Newfoundland in 1968. He is a member of the St. John's law firm of Lewis, Day, Cook, Dawe and Eaton and was from 1970 to 1985 standing counsel for the federal departments of Justice and of the Solicitor General of Canada in Newfoundland. An experienced prosecutor and recognized expert in the field of family law he has lectured in the National Criminal Law Programme of the Federation of Law Societies of Canada and at the Memorial University of Newfoundland in both the Faculty of Medicine and the School of Social Work. His wide-ranging interests have included lecturing on income tax to the bar admission programme of the Law Society of Newfoundland and the authorship of books on family and divorce law and membership of the editorial board of the Canadian Bar Review published by the Canadian Bar Association of which he is also a member. He was created Queen's Counsel in January 1980.

Mr. Powell attended Upper Canada College in Toronto graduating from the University of Western Ontario in 1958, and Osgoode Hall Law School in 1961; after articling with the Honourable G. Arthur Martin, Q.C. he joined the department of the Attorney General for Ontario. In 1966 he was named Senior Crown Counsel in charge of criminal appeals and special prosecutions and in 1971 became Assistant Deputy Minister, Criminal Law. In 1976 he commenced private practice in Toronto, and was called to the bar of British Columbia in 1981, conducting several prosecutions for the Crown in that province. In 1986 he was counsel to the *Royal Commission on the Testing and Marketing of Liquor in Ontario* headed by Mr. Justice Osler, as he then was. For sixteen years past he has been coordinator of the National Criminal Law Programme for the Federation of Law Societies in Canada and has written a book, "Arrest and Bail". Queen's Counsel since 1974, Mr. Powell has been certified by the Law Society of Upper Canada as a specialist in the criminal law.

Miss Sandra M. Burke, an associate of Mr. Day in the practice of law in St. John's, a graduate of the Memorial University of Newfoundland in 1985 and Dalhousie Law School in 1988 and called to the bar of Newfoundland in 1989 gave valuable service to the commission as the work unfolded in the capacity of assistant counsel.

* * *

In the course of the organization meetings of June 28 and August 14, 1989 and of the two days following the opening of public hearings on September 11, 1989 standing as participants in the commission's proceedings was granted on the dates as indicated to the persons and agencies named, represented by counsel or representatives as noted:

28 June 1989	Government of Newfoundland and Labrador by George P. Horan

28 June 1989	The Congregation of The Christian Brothers in Canada by M. Francis O'Dea, Q.C.
28 June 1989	Shane Michael Earle by John J. Harris
28 June 1989	Joseph Burke by Marvin R.V. Storrow, Q.C.
28 June 1989	The Provincial Advisory Council on the Status of Women, Newfoundland and Labrador by Ann Bell
28 June 1989	Working Group on Child Sexual Abuse, Community Services Council by Darlene Scott
28 June 1989	Interagency Committee on Violence Against Women by Jennifer Mercer
28 June 1989	Roman Catholic Episcopal Corporation of St. John's by Thomas J. O'Reilly, Q.C.
28 June 1989	Douglas Kenny by J. Derek Green, Q.C.
14 August 1989	Darren Connors by John J. Harris
14 August 1989	John E. Mac Isaac by John J. Harris

Criminal Justice and Complaints

14 August 1989	James F. Ghaney by John J. Harris
14 August 1989	Alvin Simms
14 August 1989	The Law Society of Newfoundland by Lois Hoegg
14 August 1989	Gerard Brinston
14 August 1989	Robert M. Connors by John J. Harris
14 August 1989	Gregory P. Connors by John J. Harris
14 August 1989	William R. Earle
14 August 1989	Gwen Mercer
13 September 1989	Edward French by Gerald F. O'Brien, Q.C.
13 September 1989	Kevin Short by Gerald F. O'Brien, Q.C.

On November 29, 1989 after initially being refused, Mr. James R. Chalker, Q.C. succeeded in obtaining standing for the Estate of Vincent P. McCarthy which he represented throughout the rest of the proceedings.

* * *

It will be appreciated that the time of writing a report of this nature may precede its publication by many weeks. The act of writing in itself is spread over a considerable period;

for example I began writing in July 1990 and finished at the end of January 1991. By means of footnotes and some interpolations care has been taken to make the text as contemporary as possible; but such is the activity of public officials and legislatures that the occasional anachronism must inevitably be revealed. Apologies for this cannot always be explicit and must be taken for granted.

A more visible departure from normal format in this report is the idiosyncratic use of, or more correctly lack of use of capital letters referring to government departments and agencies and titles of various members of the public service whose activities have been recorded. The constant appearance of combinations of capital letters such as "Acting Assistant Deputy Minister of Justice and Attorney General" is apt to crowd a page with a result unpleasing to the eye. In order to offset this an experiment has been made in use of lower case letters where constant repetition cannot be avoided, but only after making a concession to that of capital letters at the beginning of a chapter or section of the text. How successful this may be remains to be seen; it is hoped that it will not irritate too many.

Chapter I: Mount Cashel

The Christian Brothers of Ireland

Any attempt to produce an historical sketch of the activities of the lay order variously known for nearly two centuries as the Brothers of the Christian Schools of Ireland, the Irish Christian Brothers, the Christian Brothers of Ireland in Canada under which name it was incorporated by Act of Parliament in 1962 and now internationally as the Congregation of Christian Brothers, might be judged an impertinence on the part of the author of a report to the Lieutenant Governor in Council of Newfoundland, so widespread is its reputation across Canada and particularly in this province. And yet the pervasiveness of its influence on Roman Catholic education under a denominational system peculiar to the latter and the respect secured by its record of teaching Roman Catholic boys around the world and as pioneers of such teaching in Newfoundland are crucial to this inquiry and the discharge of its mandate.

As is well known the founder of the order, Edmund Rice, born in Co. Kilkenny in 1762 was a Waterford merchant who, moved by an early bereavement and compassion for the poor and uneducated boys of the town, embraced with his companions a religious life devoted to teaching them. With episcopal approval of the wearing of a quasi-clerical habit, the taking of vows of chastity, poverty and obedience and the assumption of sanctified names such as Ignatius by which Rice was known, the Christian Brothers, founded in 1802, had by 1820 established schools in Dublin and the southern and western parts of Ireland to such an extent that in that year

Pope Pius VII recognized the order as a Papal Institute under the direction as Superior General of its founder who retained that office until 1838. Care must be taken to distinguish the Christian Brothers of Ireland from the French order of Brothers of the Christian Schools founded by Saint Jean Baptiste de La Salle and constituted a Papal Institute by Pope Benedict XIII in 1742, the congregation being known familiarly in Canada where it currently operates as the De La Salle Christian Brothers. Edmund Rice was indebted to this order, not for his inspiration but for the temporary adoption of its rule in 1816, which aided his efforts to secure the brief of 1820 from Pius VII.

As is even better known the Benevolent Irish Society in St. John's, which had undertaken a largely non-denominational task of educating the impoverished youth of the colony since 1826, was faced for fifty years after with periodic administrative failures in the absence of any kind of public education, and particularly with the problem of underpaid and undereducated teachers. For a time some help was forthcoming from a Franciscan community in Ireland, but only for two years when its representatives withdrew discouraged. What the society wanted was the vigorous presence of the Irish Christian Brothers whose reputation as teachers was soundly established by mid-century, but successive applications through the Bishop of St. John's to the Superior General in Dublin were unsuccessful, because the growing responsibilities of the order in Ireland and England precluded a venture as distant and as speculative as was needed in Newfoundland. When at last in 1876 the Superior General saw his way, the gratitude and enthusiasm of the Catholic community of the colony and the disciplined teaching of the Christian Brothers had an immediate and beneficial effect. It may well be that the success of the congregation in imposing a high standard upon Roman Catholic education there was responsible for the present system of public education, conducted as it is by a tripartite denominational condominium, aided by legislative sanction and governmental restraint.

The second witness to testify before the commission on the first day of its public hearings (September 11, 1989) was Brother Francis Gerard Hepditch the Provincial Superior - more familiarly the Provincial - ruling with the aid of his council and "consultors" over the affairs of the order in a province consisting of Canada and the West Indies. His evidence, and that provided in writing by a judicious sampling of the considerable literature on the subject compiled by commission counsel, illustrated its progress in its chosen work, exemplified by its motto "To Do and to Teach", culminating in its establishment in thirteen "provinces" and three "regions" around the world, and the creation of its only orphanage in the Canadian province within the ample confines of Archbishop Howley's family home on Torbay Road in St. John's, and since 1892 the site of devoted work on behalf of orphans and children of broken and impoverished homes until the present day. This property was called "Mount Cashel" after Cashel in Munster, high upon its famous Rock, where royal transactions both pagan and Christian took place in the Dark Ages. It became the site of an orphanage housed in buildings which transformed the cottage that the archbishop had bequeathed to the archdiocese into a substantial group, partially destroyed by fire in 1926. The loss was repaired by fresh construction, urgently undertaken since the housing of the boys was critical, and the enthusiasm of the community thoroughly aroused. The last improvement was a complete renovation and some structural additions beginning in 1976.

The Congregation of Christian Brothers was first established in North America as a separate province in New York in 1916. By 1962 the Canadian activities of the order justified the establishment of a Canadian province and the Christian Brothers of Ireland in Canada were duly incorporated by Parliament (11 Elizabeth II c.22). The preamble of this private act sheds fresh light upon the nomenclature used in the order, saying "whereas the Brothers of the Christian Schools of Ireland, hereinafter called 'the Congregation' is a religious congregation in communion with the Roman Catholic Church...". In section 1 the petitioners are described as the Reverend William E. Drayton of the city of Montreal, the Reverend Joseph B. Darcy and the Reverend Gordon R. Bellows, the latter two being of the city of St. John's. Section 3 lists the objects of the newly established corporation:[2]

> **"(a) to provide educational facilities;**
>
> **(b) to establish and maintain orphanages;**
>
> **(c) to establish, maintain and conduct novitiates to be used for educational, religious and residential purposes;**
>
> **(d) to promote the religious life;**
>
> **(e) to create, direct, organize and maintain, enlarge and operate or direct and administer teaching at other educational institutions such as colleges, schools and academies;**

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[2] Exhibit C-0136, pp.34 - 35.

> **(f) to administer in Canada the property, business and other temporal affairs of the corporation."**

The nature of the congregation presents some difficulty of classification in the catalogue of disciplined organizations of the Roman Catholic Church, since the Christian Brothers, admittedly not in orders, are described as "Reverend", but it is not necessary to exaggerate anomalies in view of what was deposed to by Brother John Patrick Keane in his examination for discovery in the case of the *Christian Brothers of Ireland in Canada and the Assessment Commissioner for the Counties of Wellington and Dufferin et al.* [1969] 2 O.R. 374, then secretary of the congregation in Canada who, when asked what was the position of the Christian Brothers in the Church, replied as follows:[3]

> **"They are not clerics. That is a mistake, I think it is the garb. This is a kind of a relic of past times. We are secular, we are just organized for this particular apostolate. We are not clerical, we have no function in the Church at all. We attend services but we do not attend as officers of the Church. We are just secular. Sometimes deference is paid to us because we might be better informed than other seculars, but this priority has no foundation in the Church."**

By the time these words were uttered the Christian Brothers had long since established a dominant position in Roman Catholic education in Newfoundland and had fixed their Canadian provincialate in Ontario with headquarters at the former Beardmore property in Mono Mills. Canada was a vice-province from 1963, becoming a province in 1966 as Canada and the West Indies. In this brief note it is not possible to embark upon a detailed account of the work of the congregation in Canada and particularly in latter days in British Columbia, but it may suffice to say that much of the expansion in the American and Canadian provinces proceeded from the firm base established in Newfoundland.

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[3] Exhibit C-0136, p.56.

Since it is not within the scope of this inquiry to examine in detail the history of the Christian Brothers of Ireland, it is necessary to say that very full evidence was presented by David C. Day, Q.C., commission co-counsel not only from Brother Hepditch, Provincial Superior, Brother Gabriel McHugh, Superior General of the Congregation world-wide, and Brother Gordon Bellows, Provincial Superior immediately succeeding Brother McHugh and now a member of its General Council stationed in Rome, all of whom testified as to the constitution and history of the order, but also from former Brother J.F Barron, Brother Louis Bucher and Brother Timothy Turner dealing with recent developments at Mount Cashel Orphanage, now described as Mount Cashel Boys' Home and Training School. As well he entered in evidence valuable documentary records including publications celebrating the fiftieth, seventy-fifth and one hundredth anniversaries of its work in Newfoundland. Of these publications the one written on the occasion of the centenary and entitled *"Journey Into A New Century"*[4] is by far the most objective and least larded with superlatives.

In this compilation, distributed to coincide with the centennial celebrations in 1976, the North American foundations of the Christian Brothers are set out at length and, although my primary concern is with Newfoundland, it may be instructive to record that in Nova Scotia an activity beginning in 1913 and ending in 1940 at St. Mary's College, Halifax is listed under "abandoned teaching missions" such as St. Pius X High School in Montreal active only between the years 1959 and 1971. These disappointments were more than offset by progress in Ontario where the St. Joseph's provincialate and the Christian Brothers College were established at Mono Mills in 1967 and 1968, and teaching responsibilities undertaken in Toronto. In British Columbia, after a period of just over fifty years, the Christian Brothers had been compelled by financial stringency to abandon St. Louis College in Victoria, but Vancouver College and St. Thomas More High School in Burnaby were in a flourishing state. An international dimension was given to the Canadian province by establishments in Dominica and Antigua from which expansion in the West Indies was contemplated. The eastern American province was rich in communities of the order and included three in Peru; the western American province compromised those in the states of Washington, Montana, Illinois, California, Michigan and Hawaii. In Newfoundland, where the deepest roots were struck, the Brothers were teaching in St. John's at St. Patrick's High School, St. Bonaventure's College, Holy Cross School, Brother Rice High School and St. Pius X Boy's School; in Corner Brook at Regina Regional High School; in Grand Falls at St. Michael's Regional High School; in Harbour Grace at St. Francis Regional High School; in Avondale at Roncalli Regional High School and in Placentia, the latest commitment, at Laval Regional High School since 1968.

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[4] Exhibit C-0134.

By this time Mount Cashel orphanage had ceased to qualify as such with the decline in the large number of orphans created by losses at sea and tuberculosis in earlier years, and had become a residence for children of separated parents or abandoned mothers whose large families and limited means compelled them to entrust their boys to the Director of Child Welfare, either as wards of the state under the *Child Welfare Act, 1972* or by what was known as "non-ward" agreement with the director where the boys were neither wards by apprehension or delinquency. Mount Cashel when an orphanage had, as the commission was advised, supported a pupil population of two hundred, taught within its confines by the Christian Brothers at all levels, but with the merciful decline in the number of orphans and abandoned children as the twentieth century proceeded, had lost over half its maximum population. The Brothers who resided there taught in city schools by day, returning to Mount Cashel at night, and to occupation with the boys who themselves had been taught by day in the city schools and had returned in the evening to their dormitories and their dining room. A closer look must be taken at this unique institution, begun as an orphanage in the early days of the work in Newfoundland and becoming by operation of social forces a group foster home of impressive proportions and unusual facilities.

The Nelson Report

Of the thousands of government files examined by the commission's investigators and counsel, the Mount Cashel file kept at the headquarters of the Department of Social Services in the Confederation Building in St. John's was of paramount concern. Here, beginning in 1952 with correspondence between the minister of Public Welfare, the Honourable H.L. Pottle, and Archbishop Skinner, Roman Catholic Archbishop of St. John's, may be traced the first tentative efforts to bring a proud and private religious institution to some measure of control by a government department under recent and revolutionary legislation.

The Welfare of Children Act, almost entirely to be replaced by the *Child Welfare Act, 1972*, S.N. 1972, No. 37 gave the province the power and prescribed the duty to interfere on public grounds, although the documents indicate that the first occurrence of a ward of the province being admitted into care at Mount Cashel was on April 1, 1966, attested to by an application to share costs under the Canada Assistance Plan dated September 25, 1968.[5] Reasons for funding Mount Cashel were stated by the applicant province as the superiority of institutional care over that of foster homes, and the general shortage of the latter. In any event, the impact of this policy led to a request by the Christian Brothers to the deputy minister of the department - now Social Services and Rehabilitation - for "an analysis...of the administration and management of Mount Cashel orphanage in the light of current child care principles and philosophies". This was undertaken in the summer of 1971 by Ramona Nelson, a consultant in the federal department of Health and Welfare, from whose report this quotation is taken.[6] The author had interviews with the deputy minister, Mr. R.L. Andrews, with Mr. M. Vincent, director of child welfare, Brother J.F. Barron, superintendent of the orphanage, Brother Douglas Kenny who evidently succeeded him as superintendent during the course of the study, and with Brother Darcy representing the secretariat of the order. On a lower level she discussed the affairs of the orphanage with Brothers Thorne and French and "several of the boys in residence". She was furnished with files referring to the boys in Mount Cashel compiled by its staff and that of the department and further examined the report of the "Fire Marshal"[7], which had suggested remodelling the building, and financial statements of Mount Cashel for the previous two years. She was provided with a tour of the institution and its existing summer camp, and in this season of openness in the attitude of the Christian Brothers, soon to cloud over under the rule of the new superintendent, her report provides a valuable assessment of the situation at the orphanage in the period immediately preceding the one material to examination by this commission. Miss Nelson must be allowed to speak for herself and at length:[8]

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[5] Exhibit C-0055, p.67.

[6] Exhibit C-0055A.

> **"Mount Cashel is historically an orphanage traditionally dedicated to the care of "homeless" boys. The Christian Brothers have for many years responded to the need for care, shelter and education of these boys. As I understand the situation, the "orphanage" was, until recently, somewhat isolated and self contained with schooling, recreation, as well as daily care all being centred at Mount Cashel. This has changed to a point where all boys over Grade III attend the regular community schools, and where all boys are encouraged to involve themselves in recreational and social facilities of the community. This integration programme greatly changed the nature of the institution. The Brothers too, moved out into**

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[7] No such office in St. John's. Inspections were completed by the St. John's Fire Inspector.

[8] Exhibit C-0055A.

the community and began teaching in the local schools. The educational aspect of the institution which had been its focal point thus changed completely. The Christian Brothers who are, by and large, a teaching order, found their role had changed to a much greater social and parental emphasis. While this move into the community was progressive, and very much in the best interests of child welfare, there is no doubt that it has created many difficulties and adjustments for the Order.

Intake policies have changed a great deal in the past few years. In the past year, Mount Cashel has only accepted children referred by the Department of Social Services. Up until that time many of the boys were admitted privately on the direct response of a parent. This in effect means that it is the Department who requests admission for children who are deemed to be in need of protection. While this again is a most progressive step in that only children who must be separated from their parents are placed in the institution, it changed the role of the Brothers in relation to the community and the parents of the children. They are not in reality responsible to the parents of the boys but to the Department for the quality of care etc. that the boys are receiving.

Mount Cashel is a large 3 storey stucco building whose construction began in 1898. The main floor consists of the Director's office and adjoining office for secretary, a kitchen, dining hall, gymnasium, indoor swimming pool, outdoor handball and tennis courts, classrooms, and a t.v. room constructed like a little theatre, a well appointed study room built on the lines of an oversized den for the older boys as well as some rooms for the use of the Brothers. The second and third floor consist of 5 large dormitories, each with a capacity of 40 beds, washrooms etc. One end of the

building with a separate entrance and giving the appearance of a separate house, has 8 or 9 rooms and is used for older boys, Grade 10+. There are two boys in each room.

Parts of the building are in need of redecorating and repair, e.g. stairs to the third floor. The dormitories appeared barren and depersonalized with bunk-beds all along the walls and lockers in the centre aisle. The rooms downstairs that have been redecorated, (the older boy's study and the t.v. room) have been done imaginatively and tastefully, with the needs of the boys very much in mind.

Brother Kenny - Superintendent; nine Brothers - seven of whom teach full time in Primary and Secondary schools in St. John's, one who assists in the office administration and one who is responsible for maintenance. One lay teacher (female); qualified kindergarten teacher who teaches Grade 1, 2 and 3 at Mount Cashel; Secretary - full time - female; and, 3 cooks - full time - live in female. Total 16. Ratio of staff to residents 1-6.4.

The Superintendent appears to be very much the "manager" of the institution, is directly responsible for all the administrative work and planning. He is also the "disciplinarian and the confidante" of the boys - the "Headmaster". Both of the Superintendents with whom I had contact were committed and dedicated young men keenly concerned about the boys and about the best ways of meeting their needs. It seems probable that the Superintendent's duties are so great that he is considerably overworked. During my visits they were involved in such things as direct purchasing of food and clothing, minor as well as major administrative and programming problems.

> The routines, schedules etc. are well planned and efficiently organized but tend, as do most institutions of this size, to rigidity. The boys fit into the schedule of the institution and there is little room for individual programme planning on the basis of the boy's *(sic)* needs. While real attempts have been made to cut down on regimentation, and while every effort is made to treat the boys as individuals, the very nature and size of the institution is against this. A programme in which the individual and the group needs could be met compatibly, would be very difficult if not impossible, to work out with the present number of children and staff and the present type of programming.
>
> The goals and aims of the programmes appeared to me to be closer to those of a private school than a home. This is, of course, understandable in view of Mount Cashel's history as a school, and in relation to the Brothers all being teachers and having their expertise in this area.
>
> A great deal of faith is placed in the process of directing the boy's *(sic)* energies into work and sports and thus directing them away from or leaving little time or energy for unacceptable activities.
>
> Work activities appear well organized, duties such as cleaning, dishwashing, serving of meals, etc. are shared equitably. I could not estimate how onerous these were but I did not receive the impression that this was a problem."

The author then comments favourably upon the warmth and spontaneity of the management of the institution, particularly in connection with the activities of the summer camp, which she summarizes with the words, "the commitment of the Brothers and of all staff to the boys is very great". She proceeds:

> **"Mount Cashel has been maintained by:**
>
> **1. Private monies secured from an annual Christmas raffle and from the Order through private donations etc.**
>
> **2. Payments from parents**
>
> **3. Payments from the provincial government for children in their care (see annual financial report)**
>
> **The building itself is owned by the Diocese but the complete maintenance, repairs, etc. are the responsibility of the Order. The heating and electricity for the building are major financial considerations due to the size of the building, and the running costs are greatly accelerated by these two factors.**
>
> **At this stage, with almost all the children being under the care of the provincial government, the government is the major funding body. The rates paid by the provincial government were the same (minus the family allowance) as rates paid to foster parents and based on the same age criteria. While this appeared to be sufficient to cover the daily costs of food, clothing and personal needs of the boys, the overhead costs were not being met and thus a substantial deficit was accrued in the fiscal year 1970-71. While the population remained high (160-200), there were sufficient funds to function. As the population began to decrease to its present population of 103, the overhead of course remained constant and the deficit began to accrue.**

> **The decision made in July 1971 by the provincial government to increase the rate by approximately 1/3 in each age group and to make a grant sufficient to cover a large portion of the deficit will remedy the situation temporarily."**

The report continues with recommendations which are prescient and prophetic.

> **"1) Building**
>
> **If the building is to be retained for the purpose of a children's institution it would seem important to make the following renovations:**
>
> **a) partitioning the second floor dormitories in such a way that individual rooms and rooms for 2 and 4 boys could be provided. The window positioning in the second floor would seem to make this feasible. This would give the boys a place of their own and would enable them to have some privacy. (It would also create additional problems in staffing which will be outlined in recommendation 3). It would seem to me a very important step in individualizing the institution and thus more adequately meeting the boy's *(sic)* personal needs;**
>
> **b) ensuring that the building meets all the requirements of the Fire Department Marshal's office;**
>
> **c) possibly sealing off the third floor. (If on the advice of competent authorities it were determined that heating costs could thus be substantially reduced). (This would also save the**

cost of repairs to the staircases and the on-going maintenance work).

2) Intake

It has already been agreed that intake be confined to children under the care of the Director of Child Welfare.

We would recommend that

(i) intake be restricted to boys eleven years of age and over

(ii) that intake be restricted if possible to boys who are in contact with their families.

These recommendations are put forth for the following reasons:

(a) The emotional and affectional needs of young children cannot in my opinion be fully met in a large institutional environment. In the formative years, and particularly the pre school years, individual attention, a position in a family and a sense of family is of great importance for present and future development.

While the institution has a very definite position in the range of placement services for children, it cannot adequately replace the familial needs of most children. It can though, provide specialized care and treatment for children who cannot be treated in individual homes. It can also provide a good living experience for children who cannot live in their own homes, but whose relationship with their own family is such that they cannot adjust to a "new family" concept or the closeness of a foster home. This more commonly occurs with older children.

(b) If it is agreed that a large institution cannot adequately give a feeling of family, it is important, in my opinion, to attempt to only place in this type of institution children who are having some of their "family" needs met outside. It is true that there are a good number of older children who cannot for a variety of reasons live in their own home but who have a relationship good or bad with their parents and cannot really accept the close family life of a foster home. For these children an institution such as Mount Cashel can provide a good living experience. This recommendation however should be considered as general intake policy, not as a rigid, exclusion *(sic)* one. There could be situations in which, for example, "family" could be strengthened and maintained by admitting a younger child with his older brothers to Mount Cashel. In all probability situations will arise where for other social and practical reasons an older boy might be considered for admission who had no contact with his family. In this type of situation it would then be important to find relatives or even a volunteer family to whom he could relate outside the institution.

3) Child Population

Confining the number of residents in Mount Cashel to a maximum of between 50 and 60 boys over 11 years of age would in all probability greatly strengthen the quality of life. A more home-like atmosphere could be created; much of the "regimentation" could be eliminated and the Brothers

and lay staff would then have more opportunity to work closely with the boys.

4) Staffing

The Brothers provide stability and structure to the institution that is highly desirable. Their commitment to the boys is one of the most positive features of Mount Cashel. However, as their main area of expertise is in the teaching field it would seem desirable to strengthen and augment their services in the following way:

(I) adding to the staff a qualified experienced social worker on a full time basis. This person's duties would include the following:

- **(a) working with the families of the children in care as well as the boys themselves in order to**
  - **(i) effect rehabilitation with own families when possible and desirable;**
  - **(ii) respond more appropriately to the boys concerns and needs and feelings with regard to their own families by being in a position to know both the boy and the family.**
- **(b) working co-operatively with the Brothers through a programme of exchanging and meshing the knowledge of the teaching and social work disciplines in order to effect in Mount Cashel an environmental situation conducive to optimum living conditions for the boys. This programme would involve**

> **staff meetings and training sessions, as well as a direct working relationship with the superintendent;**
>
> **(II) adding to the staff, preferably by relieving one of the Brothers from some of his duties, an assistant to the superintendent who would be responsible for day by day administration functions, such as ordering and planning food requirements, clothing, transportation, and other administrative duties;**
>
> **(III) considering at a later stage, the addition of a house mother/s to provide more female identification."**

I have omitted two substantial footnotes, the first of which deals with the proposed social worker, wherein the author says "the problem of deciding whether the social worker should be employed directly by Mount Cashel, or by the Provincial Government would be a matter for serious consideration". She recommends the latter as employer, but warns that the lines of accountability must be clearly developed to avoid conflicts. While admitting that she is not sufficiently knowledgeable to make a recommendation, she expresses the view that the social worker should be "an integral part of the Mount Cashel organization". In the second footnote which refers to the provision of "more female identification" as recommended above, she qualifies her view to the extent of doubting whether "this is really desirable" if her recommendations as to intake were accepted and the number of children reduced, in which case the existing female staff might suffice. The footnote concludes:

> **"An arrangement should be made though for house mothers or some of the Brothers to have their sleeping quarters in close proximity to the boys."**

After suggesting that the funding of Mount Cashel should be a *per diem* rate cost structure based on "cost experience of each preceding year", Miss Nelson summarizes her conclusions in the following terms.

> **"Mount Cashel appears to be performing a very useful community function. In studying this institution several alternate plans for its future use were considered and the recommendations outlined above should not be considered as the "only way" for Mount Cashel to continue. For example, the feasibility of using Mount Cashel for family groups on a short term placement basis where the prognosis for reconciliation with own families was good, was investigated. As this would involve placement of girls as well as boys if the family concept was to be maintained the plan was not considered possible or realistic at this time. "Hostel" type care for older boys or young adults plans for after care for graduates etc. were all considered. The need to provide counselling services as well as emergency shelter for former residents who regard Mount Cashel as their "home base" was discussed in some detail and the possibility of private funds being allocated to this purpose should continue to be investigated. This type of service could quite feasibly be added to the regular programme.**
>
> **It would seem inadvisable to consider immediate implementation of above recommendations re residence requirements. A phasing out process would seem more desirable. To many of the boys Mount Cashel is their home and it would seem unwise to uproot them in order to conform to a new policy. If the recommendations re**

the appointment of a social worker were acted upon, a thorough and complete plan for each boy for whom Mount Cashel was not considered an appropriate placement under the new policy could be worked out. It seems probable that with concentrated and extensive work, a significant group of boys might be re-united with their own families. For another group, and particularly the very young group good foster and/or adoptive placements could be worked out. If intake were confined to boys eleven and over as a first step and if it were accompanied by the above "placement" process a natural reduction and change in age groupings would in all probability be achieved over a six month period. This would allow time for a satisfactory financial formula to be worked out, and for all the financial considerations with regard to the building itself to be fully considered.

If after careful analysis and consideration the costing considerations proved to be insurmountable to a point where it were deemed inadvisable to continue to function the population would then be reduced to a point where the closing of Mount Cashel would not create as great a problem as it would now. If the costing factors could be worked out the institution would be at a stage where programmes and functions could be initiated, compatible with a group of 50-60 older boys. From the information gathered from the Department, and from my observations of Mount Cashel, it would seem apparent that

1) **there is and will be, a continued need for residential care of older boys that cannot be adequate or appropriately met through a foster home programme;**

2) **that Mount Cashel has provided and can continue to provide a service that would meet this need.**

> **For these reasons, it is hoped that the financial problems can be worked out to the mutual satisfaction of the Department and Mount Cashel."**

The following figures are appended to this report and illustrate the age groups and length of time in residence in total terms and as divided on a basis of status.[9]

MOUNT CASHEL

Age Groups	Total Population
Under 6	3
6 - 8	7
8 - 10	14
10 - 12	14
12 - 16	46
over 16	17
Total	101

Length of time in residence	
1 year or less	17
1 - 2 yrs	16
2 - 4 yrs	24
4 - 6 yrs	42
6 yrs +	2
Total	101

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[9] Exhibit C-0055A.

Status

Non-ward	Wardship Pending	Temporary Wards	Permanent Wards	Permanent Delinquent
51	2	5	25	3

over 16 status unknown
15

Contact with a parent in past 6 months	71
No contact with " " " " "	30

Mount Cashel and the State

There is no doubt that the author of this report relied for much of its content not only on what she observed but what was told her by Brother John Francis Barron who was the superintendent of the orphanage from 1968 to 1971, having first taught there in 1963. After leaving he tried for a time to teach at the order's academy in Antigua but in 1972 resigned from it and became a lay teacher in Newfoundland, as he is to this day. When he testified before the commission in April 1990 he described a period when very little contact existed between Mount Cashel and the department of social services, even though the placement of children taken into care by the director of child welfare was well under way. He represented the more outgoing opinion in the congregation and did his best to foster good relations with the department, mindful as he was bound to be of the increasing cost of taking care of these Catholic boys and of the importance of making plain to it the difficulties of the orphanage. Some of the work in this respect done by Brother Barron bore fruit in the superintendency of Brother Douglas

Kenny who succeeded him as superintendent, the establishment for instance of a liaison committee composed of three of the senior brothers at Mount Cashel and of George Pope, Assistant Deputy Minister of Social Services, F.J. Simms, Director of Child Welfare and Catherine Cahill, district supervisor, Child Welfare Division, St. John's district office. This was in 1973, but already signs of a cooler climate were beginning to accumulate, particularly in the attention given to the status and functions of a social worker, the need for whom had been much emphasised by Brother Barron but whose activity was successfully curtailed by Brother Kenny and confined to minor administrative duties with limited access to the orphanage and its charges. Whereas Barron had done his best to encourage a closer relationship with the department and urged on all concerned the need for help in areas such as social welfare and health, Kenny seemed determined to keep it at arms length in accordance with an earlier tradition and to make sure that the intrusion of a departmental officer into the affairs of Mount Cashel would be strictly controlled in terms of his duties and responsibilities. In a letter of April 17, 1972 addressed to George Pope, then Director of Field Services in the Department of Social Services and Rehabilitation, F.A. Davis, regional administrator for St. John's observed:[10]

> **"Enclosed is a memorandum which was compiled by Welfare Officer Laurie and presented to the undersigned by Mr. Michael Hobbs, District Supervisor, St. John's District Office. From what the Welfare Officer has said, it would appear that there has been a complete change in the outlook of the present Administrator of Mount Cashel as compared to his predecessor in that the**

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[10] Exhibit C-0055, p.126.

> **Welfare Officer's role now is to provide comprehensive social histories, attend to monetary issues, and arrange transportation home on behalf of the boys at certain periods of the year."**

Mr. Davis's reaction to this was contained in a concluding paragraph in which he said that it had occurred to him, "on a number of occasions that Mount Cashel should have a competent person on their staff to deal with any problems that may arise with the boys, and that this Department should not become deeply involved or to the extent of our involvement within the past three or four years." He referred to "a different philosophy" although he could not say "what has happened since the administration changed hands". Similar concern, but reflecting more positive views, was expressed by probation officer Brendan Devine, in a letter to Simms, writing from the St. John's district office on July 11, 1972, and discussing the duties of a welfare officer, shortly to be known as a social worker, saying,[11]

> **"My primary concern involves the lack of communication, the almost complete absence of a working relationship, that presently exists between Mount Cashel and this Department. So very little of what is actually taking place within the institution is shared with us that I have practically no idea of programs other than educational and recreational. Mount Cashel is staffed primarily by Christian Brothers who hold other positions ie. teacher etc. They perform the role of supervisors of the boys in addition to their regular working activities... There are, at this moment, 79 boys at Mount Cashel yet I am not aware of any one on the staff with social work training. We have on a**

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[11] Ibid, pp.127 - 128.

> **number of occasions offered the services of one of our Welfare Officers, however, during the past two years I have been most unhappy with the relationship between our worker and the Superintendent. I gather from the welfare officer that his reception at the institution is somewhat cool and he is given very little opportunity to become involved with the boys."**

The result was a meeting in the office of the new minister, the Honourable A.J. Murphy, a letter from him to Brother Kenny in which the liaison committee was approved and the arrangement of the first meeting. It is of interest to note that the minister's initiative was greeted by the superintendent with warmth in a letter commencing "Dear Ank". The minister did not weary of well-doing and took pleasure from his success in persuading the government to guarantee a loan of $450,000 in response to a need expressed in a letter to him from the provincial superior of November 20, 1974 one paragraph of which may be quoted:[12]

> **"Since we have established the viability and, as far as one can predict, the durability of Mount Cashel, the Christian Brothers, now, deem it necessary to reconstruct the existing buildings of Mount Cashel. Structural engineers and architects have been consulted. All have agreed that the present structure is strong. Rather than construct then, we shall endeavour to reconstruct and renovate, bearing in mind current needs and approaches to Child Care."**

This transaction was effected by order in council providing the orphanage with the option of either receiving a grant of that sum to be advanced over a period of "ten to fifteen years" or, as an alternative, a provision that the department of social services would repay over such period the amount of $450,000 as required by a lending bank. Thus there began a programme of renovation and reconstruction which was to continue at least until 1980 and realize one of the principal recommendations of Ramona Nelson's report. It was otherwise with her recommendations dealing with the social worker at the orphanage, and in this respect Mr. Simms had to acknowledge defeat. He informed Catherine Cahill, district supervisor at Harvey Road, that "a meeting has been held with Brother Kenny, Superintendent at Mount Cashel, and Brother Nash, and it has been agreed that more organized procedures must be followed in order to improve the existing situation. It has therefore been decided to involve the Field Staff of our St. John's District Office but *for administrative purposes only.*" The social worker - to be, in the event, Mr. Robert Bradbury, many times a witness before the commission - was therefore to be restricted to making regular visits to the orphanage for provision of clothing, school books, and health services cards, completion of placement reports, and making recommendations for extended care. Since Bradbury had a complete caseload in the field of corrections it was as well for him that his duties were confined to matters of paper-shuffling routine.

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[12] Exhibit C-0055, pp.154 - 155.

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The Centennial

In 1926 the Christian Brothers of Ireland celebrated the fiftieth year of laborious service to Roman Catholic education in Newfoundland. This jubilee celebration, by virtue of a pilgrimage back to Newfoundland, was a great success, and the seventy-fifth anniversary in 1951 was celebrated with even greater *éclat*, church and state joining together in the persons of the Archbishop of St. John's and attending clergy and the Lieutenant Governor of the province to commemorate the auspicious occasion. By 1975 the time had come to celebrate the hundredth anniversary in the following year, and a distinguished member of the order, Brother Dermod F. Nash (properly Dermod Pearse) and of its provincial council was appointed to organize the celebration. Brother Nash had some five years earlier been chairman of a conference committee which, in its report to the council indicated the existence of grave misgivings as to the effectiveness of the teaching services of the order in Newfoundland. In his executive committee report for the Christian Brothers Education Council of Newfoundland he used the following language:[13]

> **"There never was, nor is there now, any doubt as to the fine spirit among our Brothers in Newfoundland, nor the slightest misgiving as to the devoted attention given students in our schools. The Brothers are convinced that they can and will achieve their role in education in Newfoundland because of their training, dedication, and availability. There has existed for some time, however, real concern that our ability to perform "effectively" has been greatly impaired, in terms of manpower shortage as also a radically changing school situation in Newfoundland. Disproportionately small numbers of Religious Staff Members in our Schools have, in the opinion of many Brothers, created a loss of real contact as "Religious" and even as "Educators" where we become pivotal dispensers of discipline. Meaningful**

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[13] Exhibit C-0260, pp.41 - 42.

> **contact with parents, ex-pupils, and the business world has been greatly diminished and impaired. Fledging School Boards are exercising increased administrative control, while at the same time such Boards have not as yet realized their own aims and objectives in the field of education. In ever-increasing numbers lay teachers are becoming fully qualified and are seeking administrative positions. The whole spirit of the "times" indicates a certain cynicism toward religion and a reluctance toward control. Certain inadequacies on Governmental and Departmental levels in terms of curriculum make proper school administration difficult indeed. Constant and sound communication is obviously needed between School Boards, Government Educational Committees, and the Clergy. Viable participation in N.T.A.[14] should be a must, for it is here that ample opportunity for energetic persuasion is available through Liaison Committee work, which profoundly influences policy of Government, the University and even School Boards. Finally, there is an urgent need for a fully authorized Brother who can and will speak for the Brothers in Newfoundland, as also a Director of Education for our Schools so that positive and informed action may result.**
>
> **Thus our determined efforts throughout the year to turn our "sights" inward, in the hope that such efforts would bring fruitful and effective results. A thorough examination of our problems was proposed to prevent our drifting aimlessly into situations we did not particularly desire, or into situations which, because of our "scattered" and hardly representative thinking, could be taken as OUR ATTITUDE."**

At the conference a resolution proposing that the congregation retain Mount Cashel, even if it involved funding from its own resources, was tabled, but the following was carried:[15]

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[14] Newfoundland Teachers' Association.

> **"That the Congregation establish a fixed policy for Mount Cashel to ensure its efficient administration. Such policy should ensure the exclusion of the possibility of Government control."**

Thus there was implicit recognition of the drawing together of the Mount Cashel community providing foster-care for the wards of the state, a department of government providing the much-needed funds, and the foreshadowing of a situation which must inevitably develop from him who pays the piper calling the tune. In the proceedings of the conference it was even conceded that Mount Cashel would accept some boys from Pleasantville, or in other words juvenile delinquents committed to the Boys' School operating in that quarter of the city of St. John's, providing that they might be dismissed at the will of the superintendent of the orphanage.

The centennial celebrations took place early in 1976 and, naturally enough, were of even more consequence than those which had preceded them in the fiftieth and seventy-fifth year. Again the principal functionaries of church and state united to extol the virtues of the Christian Brothers, particularly as displayed in the teaching and nurture of boys in their far-flung schools and at Mount Cashel. But by this time in the orphanage the seeds of tragedy had been sown.

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[15] Exhibit C-0260, p.44.

Chapter II: The Guardians

Social Services and Child Welfare

Before dealing with evidence upon the credibility of which I have to rule and make findings of fact within the provisions of article I of the terms of reference of the commission, it is necessary to refer as briefly as possible to that which counsel produced in profusion as to the legislative and administrative apparatus in place for responding and dealing with complaints. This I trust is permissible because of the lapse of fifteen years between the time when these events occurred and the present day, during which the apparatus has become more sophisticated and the public more aware. I shall first address the situation of the Department of Social Services in 1975 and not pause to consider whether it was otherwise known as the department of Social Services and Rehabilitation or by any other variation of title which may serve to obscure the essential structure. An abundance of evidence was led, beginning with that of Mrs. Elizabeth Crawford who entered the public service in 1969 as a welfare officer and at the time she testified on the first day of the commission's public hearings was Assistant Director of Child Welfare; it continued to accumulate as various officials of the department were called and documents filed.

The early history of social policy in Newfoundland has been the subject of compendious treatment by Mr. Stuart R. Godfrey, a former assistant deputy minister of Public Welfare, in his book *"Human Rights and Social Policy in*

Newfoundland: 1832 - 1982"[16] an invaluable treatise about which it can only be said by way of adverse comment that the Canada Council and Memorial University should have extended their grants in aid to include an index. The post-confederation agency which opened a new and vital chapter in the quality of life in the province was established by the *Department of Public Welfare Act* R.S.N. 1952 c.18 which appears again in amended form as chapter 92 of the last revision of the statutes of Newfoundland in 1970 as the *Department of Social Services and Rehabilitation Act*. In 1973 this act was repealed and replaced by the *Department of Social Services Act, 1973*, S.N. 1973 No. 31 a statute which up until December 1975 had only been once amended in order to change the name "welfare officer" to "social worker" on December 20, 1974. The powers, functions and duties of the minister as section 7 of the act provides are set out in subsection (a) and include:

> **"the supervision, control and direction of all matters relating to social services and social assistance which are within the legislative authority of the province, including, without limitation of the generality of the foregoing, all matters relating to**
>
> **(i) the welfare of children,**
>
> **(ii) the adoption of children,**
>
> **(iii) the administration of all matters arising out of the laws relating to deserted or neglected spouses or children and to illegitimacy,**

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[16] Exhibit C-0290. Harry Cuff Publications Limited, St. John's, Newfoundland, 1985.

(iv) the administration of all laws relating to juvenile delinquency within the jurisdiction of the province,

(v) the care and guidance, other than institutional, of physically and socially handicapped citizens of the province of all ages,

(vi) the identification of cases of economic hardship or deprivation and the prompt alleviation thereof by the provision of appropriate, publicly financed, material assistance including without limitation of the generality of the foregoing, such identification and alleviation as respects aged, blind and disabled persons,

(vii) the furnishing, in cooperation with the Department of Manpower and Industrial Relations, the Department of Rehabilitation and Recreation, the Department of Rural Development and other departments of the Government of the province, of guidance to all recipients of the assistance referred to in subparagraph (vi) in their quest for opportunities of gainful employment and rehabilitation, and

(viii) the effective prevention of abuses concerning matters referred to in subparagraphs (vi) and (vii)

which are not, or in so far as they are not, by law or by order of the Lieutenant-Governor in Council, assigned to any other minister or department of Government."

Useful detail is given in the annual report of the department of social services for the year ended March 31, 1975 submitted by the minister to the Honourable Gordon A. Winter, Lieutenant Governor of Newfoundland in an undated letter of transmittal, and incidentally the last departmental report published to date for public consumption. Under the heading "scope and responsibility" on page one of this report the following appears:[17]

> **"The Department of Social Services is a province wide organization with Regional and District offices in 45 communities throughout the Province. The Department is involved in providing financial assistance, material aid and a broad spectrum of Social Services to people in their own homes. The Department has a total staff of 427, of whom 337 are attached to Regional and District offices throughout the Province.**
>
> **The mission of the Department is to prevent neglect and dependency from occurring and to alleviate want and distress. Services and financial assistance are provided directly to families and individuals in their own homes.**
>
> **Vital supplementary and related services are provided co-operatively by:**
>
> 1. **Foster Parents.**
> 2. **Mount Cashel Orphanage.**
> 3. **The Department of Rehabilitation and Recreation.**
> 4. **Other Departments of Government and private agencies throughout the Province."**

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[17] Exhibit C-0025.

After enumerating the statutes and regulations that the department was responsible for administering the report sets out its organizational structure briefly as follows:[18]

> **"Field Services is responsible for delivering the programs of the Department to people in their own communities. This is done through a network of five Regional and 45 District Offices, staffed by trained Welfare Officers, Supervisors, and Regional Administrators.**
>
> **Social Assistance is the Provincial Governments's program within the framework of the Canada Assistance Plan to provide support and supplementation for needy persons to help them maintain a reasonable standard of living and to become partially or wholly self-supporting wherever possible.**
>
> **Child Welfare Services are primarily concerned with prevention of neglect and abuse of children by protecting them in their own homes through family counselling; and providing suitable care through foster homes or adoption when separation of children and parents is considered necessary. They also work towards reuniting children and parents wherever possible.**
>
> **Correctional Services for children are aimed at rehabilitating them in their own homes through individual and family counselling, and providing suitable substitute care through foster homes or institutions (administered by the Department of Rehabilitation and Recreation) where removal of**

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[18] Ibid, p.3.

> **children from their own homes is considered necessary. They also provide follow-up care when children are returned to their own homes.**
>
> **Employment Opportunities is a program to enable recipients of Social Assistance to change their circumstances for the better. It proposes to do this by creating and improving opportunities for recipients of Social Assistance to enter employment either directly through job placement or indirectly through retraining. The program is concerned particularly with those Social Assistance recipients who have particular and continuing difficulty in finding and keeping employment.**
>
> **Staff Development. The Division of Staff Development is responsible for the planning, organization, co-ordination and evaluation of an on-going training program emphasizing the selection, orientation and professional development of the staff of the Department of Social Services as a whole; and for evolving systems to encourage the personal development of staff members in the areas of evaluation, recognition of excellence and effort, encouragement of innovation and the processing of grievance.**
>
> **Planning and Research is the Division responsible for the development and direction of departmental research and planning related to the growth and development of the Department."**

This preliminary treatment ends with a statement of the position of the provincial department in formulating a review of the social security system with other provincial ministers and the federal minister of health and welfare as a result of which much progress and improvement has been made in subsequent years.

The programmes of the department summarized above were deployed over the province in five regions: Eastern at Harbour Grace, Central at Grand Falls, Western at Corner Brook, Labrador at Happy Valley and St. John's, each headed by an administrator or regional manager as the incumbent was subsequently called. These regions were subdivided into districts in turn presided over by district supervisors or district managers; the focus of the inquiry must be reduced to considering only the St. John's region at this stage of the report. Within that region were five districts: Bell Island, Long Pond, Bay Bulls, Fermeuse and St. John's. Headquarters for both the St. John's regional office and the St. John's district office were at Harvey Road, long known locally as "City Welfare" and in 1975 this district office served the whole city including Mount Pearl, where three offices perform its functions at the present day. This report will be mainly concerned with the Division of Child Welfare which at the material time was known as the Division of Child Welfare and Corrections, later to lose the responsibility for corrections programmes. It should be borne in mind that in relation to all programmes of the various divisions Field Services was responsible for providing personnel for their development. In remote parts of the province a single official might be found administering all the programmes of the department, whereas in St. John's and Corner Brook specialization prevailed and within the confines of a district office, particularly in the St. John's district, individual supervisors presided over each. Thus, as we shall see, child welfare had a district supervisor in the St. John's district office as did corrections, among others, to administer the divisional programme. In the case of child welfare the administrative chain of command led from the social workers in the front line with their caseloads back to the district supervisor, then to regional headquarters and finally to the headquarters of the director at the Confederation Building, responsible to the minister for child welfare programmes across the province.

Looking at the departmental structure from the standpoint of the St. John's district office reference should be made to chart 1[19], appendix A,[20]. Presiding over all was the minister to whom the deputy minister was responsible; he was reported to directly by an assistant deputy minister and a director of administration. The assistant deputy minister was apparently responsible for the transactions of the director of child welfare (and corrections); the director of social assistance, whose programmes involved the payment of long term and short term income subsidies or, in the plain words of the past, welfare payments; and the directors of employment opportunity, field services, and staff development. As we have seen the St. John's regional office reported to the director of field services and was in turn reported to by the St. John's district office which housed supervisors for the programmes of child welfare and corrections, social assistance and employment opportunity with attendant social workers, of which there were eight in the child welfare office and three in the corrections office. In the latter was Robert Bradbury, with, as observed above, a full caseload and the Mount Cashel liaison responsibility. As the chart will show there was a significant distinction apparently enjoyed by the director of child welfare in that his supervisor at the district office could and did habitually report to him direct, and that he, like the members of the Child Welfare Board, a purely advisory body which with him, and through him, had direct access to the minister. The explanation of this apparent anomaly can be found in the provisions of the *Child Welfare Act, 1972*.

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[19] Exhibit C-0024D.

[20] All appendices are found in Volume II.

This statute cited as S.N. 1972, No. 37 repealed all previous enactments which began with the *Welfare of Children Act*, R.S.N. 1952, c.60 and continued with the *Child Welfare Act*, S.N. 1964, No. 45, leaving, be it said, a truncated *Welfare of Children Act*, the surviving provisions of which applied to juvenile offenders until 1984 when the *Young Offenders Act* (Canada) superseded them. Since the *Child Welfare Act, 1972* was in force and reasonably contemporary with the period 1974 - 1976 with which this report will shortly deal, it would be pedantic to embark on a legislative history preceding its enactment. None the less one feature of the act is not new, having appeared in S.N. 1964, No.45 and subsequently in R.S.N. 1970, c.37 in similar if not identical language. Part I of the act of 1972 dealing with the director and child welfare board provides as follows:

> **"3. The Lieutenant-Governor in Council may appoint a Director of Child Welfare who shall administer and enforce this Act, under the control and direction of the Minister."**

A legal opinion as to the effect of this provision might well conclude that the director of child welfare not only had access to the minister, but such access was independent of the deputy minister or any assistant deputy minister. But Mr. F.J. Simms who was director from October 1, 1971 to March 31, 1989, and who appeared before the commission on four occasions as a witness beginning on October 11, 1989 testified as follows on that day, Mr. Day, putting the questions:

> **"Q. Now then, you say that as the Director of Child Welfare you reported to the Assistant Deputy Minister. Did you have any reporting responsibilities to anybody else other than the Assistant Deputy Minister as the Director of Child Welfare?**
>
> **A. No, I was responsible to the Assistant Deputy Minister. I would only report to someone else if the Assistant Deputy Minister was not available. Like I would go to the Deputy Minister if the Assistant Deputy Minister wasn't available, or I would go to the Minister if both of these gentlemen were not available.**
>
> **Q. And I take it that were the Deputy Minister or the Minister for some reason or other to request you to do a particular assignment, then presumably you would report back to that senior government person who had made the request?**
>
> **A. No, sir. I would normally direct any responses to a request through my immediate supervisor, and that would be the Assistant Deputy Minister.**
>
> **Q. So that if, for example, the Deputy Minister made a request to you, you would report in making your response through your Assistant Deputy Minister?**

A. **That is right. Unless some--there was some specific request -- some directive given for me to go directly to the Deputy Minister.**

Q. **Yes, well this is what I was getting at--that if you were specifically told by the Deputy Minister to report to him, you would if he specifically directed it?**

A. **Yes, I would then.**

Q. **But in the ordinary course of events the person or the position to which you reported was that of the Assistant Deputy Minister?**

A. **Yes, that is correct."**

It will be seen later that this rooted belief in the propriety of proceeding through "channels" produced in some important particulars the delaying and sometimes withholding of information from the minister responsible to the House of Assembly for the conduct of his department. Another element in the establishment of the department was the child welfare board, of origin coeval with the director, and continued by section 7 of the act which reads as follows:

"(1) **The Lieutenant-Governor in Council may appoint a board which shall be known as the Child Welfare Board and which shall consist of not less than five and not more than nine members.**

(2) **Members of the Board**

(a) **shall hold office during pleasure for three years from the first day of January**

following their appointment, and until their successors are appointed;

(b) are eligible for reappointment; and

(c) shall serve without remuneration, but may be paid their actual travelling expenses, if any, incurred while attending meetings of the Board.

(3) When a vacancy occurs amongst the members of the Board because of death, resignation or illness or if, for any other reason in the opinion of the Minister, a member should be replaced, the Lieutenant-Governor in Council may appoint a successor to that member and the successor shall hold office for the remainder of the unexpired term of the member whom he replaces and the successor is eligible for re-appointment.

(4) The Lieutenant-Governor in Council may designate one of the members of the Board to be its chairman, and the Board shall meet at his call or that of the Director.

(5) The Board shall

(a) meet as often as may be necessary for the consideration of questions pertaining to the welfare of the children of Newfoundland;

(b) assist and advise the Director in the administration of this Act;

(c) promote the proper treatment of children to whom this Act applies;

> **(d) encourage, through study and discussion, the development and maintenance of sound standards of child protection in Newfoundland; and**
>
> **(e) perform such other duties consistent with this Act as may from time to time be prescribed by the Lieutenant-Governor in Council or the Minister."**

There is nothing in the evidence which suggests that this body played any important or effective part in the area of child welfare, and when Elizabeth Crawford testified in September 1989 she said that it had not met since 1987.

The heart of the statute includes the definition of a neglected child (now known as "a child in need of protection") and is found in section 2 subsection (p) as follows:

> **"neglected child means a child**
>
> **(i) who is abandoned or deserted by both parents, or if one is dead, by the survivor or the guardian,**
>
> **(ii) whose parents, or parent if only one be living, have or has allowed him to be brought up by another person at that person's expense under unsatisfactory conditions,**
>
> **(iii) whose parents, or surviving parent if only one, are or is undergoing imprisonment, and there is no other person legally liable to maintain the child,**

(iv) whose parents, or surviving parent, or guardian or other person in whose charge he may be, cannot by reason of misfortune, disease or infirmity properly care for him, or are unfit to have charge of him, or refuse to maintain him,

(v) who is found wandering about without a proper or settled place of abode, or is found sleeping at night in barns, outhouses or in the open air, or any other undesirable place,

(vi) who is found living with vicious or disreputable persons,

(vii) who, by reason of neglect, intemperance or vice of his parents or guardians, is suffered to grow up without proper education and control, or in circumstances conducive to an idle and dissolute life,

(viii) whose parent or guardian is able to provide proper medical, surgical or other remedial care for the child, but neglects to provide such care or, whether financially competent or not, refuses permission for such care or any remedial measure when recommended by competent medical authority,

(ix) who is found begging in any place of public resort,

(x) who habitually frequents any tavern, pool-hall or gambling room,

(xi) who, being under the age of fourteen years, habitually sells anything in the streets or public places after nine o'clock at night,

(xii) who habitually absents himself from his home or school,

(xiii) who habitually uses obscene, profane or immoral language or is guilty of any indecent conduct in any public place,

(xiv) who is unlawfully assaulted, ill-used or treated with cruelty or neglect by his parents or guardian,

(xv) who is found having in his possession any obscene picture, drawing or printed material,

(xvi) who, being under the age of sixteen years, is employed anywhere between the hours of nine o'clock at night and eight o'clock of the following day,

(xvii) who,

(A) being a female,

(B) being a male under twelve years, or

(C) being a male between twelve and fourteen years old and without the written consent of his parents or guardian, is found selling newspapers or other related articles in a public place,

(xviii) in respect of whom an offence under subsection (4) or (5) of Section 4 of The Adoption of Children Act, 1972 or the equivalent provisions of any predecessor Act to that Act has been committed,

(xix) **whose parents are dead, and who has no relatives liable to support him, or**

(xx) **who is illegitimate and whose mother is dead, incapacitated or without means or unwilling to support him, or who is brought before the Court with the consent of the mother for the purpose of transferring the guardianship of him to the Director."**

It will be seen that subparagraph (xiv) provides a firm legislative sanction against all the types of abuse which have been explored by this commission and by those witnesses and organizations whose business it is to define and analyze them. Part II of the act deals with neglected children and section 10 provides:

> **"(1) Where it is believed, on reasonable or probable grounds, that a child is a neglected child, the Director or a welfare officer or any person authorized by the Director in writing may apply to a Judge for a declaration that the child is a neglected child.**
>
> **(2) The Director or a welfare officer or the person authorized by the Director to make the application under subsection (1) shall, at least ten days prior to the date set for the hearing of that application, notify the child's parents or guardian, if known, of**
>
> **(a) the name of the child in respect of whom the application is being made;**
>
> **(b) the subparagraph of paragraph (p) of Section 2 under which the child is considered to be a neglected child; and**

> **(c) the time and place of the hearing of the application.**
>
> **(3) The Judge shall forthwith hear the application and may compel the attendance of witnesses on the hearing.**
>
> **(4) If the Judge, upon the hearing of the application, finds that the child is a neglected child, he may so declare and may make an order in respect of the child."**

These sections bring the department of social services and the department of justice on to the scene, and section 11 thereupon gives the judge and other officers additional powers contained in the first three subsections which need especially to be noticed.

> **"(1) Where he has reasonable or probable grounds for believing that a child is a neglected child,**
>
> **(a) a constable or other peace officer;**
>
> **(b) a welfare officer;**
>
> **(c) the Director; or**
>
> **(d) any person duly authorized by the Director may apprehend that child without warrant.**
>
> **(2) Where it appears to a Judge, on information laid before him on oath, that there are reasonable or probable grounds for believing that there is a neglected child at any place under his jurisdiction, the Judge may issue a**

warrant authorizing any person referred to in subsection (1) to

(a) enter, by force if necessary, any building or other place specified in the warrant and search for the child; and

(b) apprehend the child if, in his opinion, the child appears to be a neglected child,

and it is not necessary to describe a child by name in an information or a warrant laid or issued under this subsection.

(3) A child apprehended pursuant to subsection (1) or (2) may, pending enquiry, subject to subsection (4),

(a) be taken into custody and detained in

(i) a receiving home, or

(ii) be permitted, if the Director consents, to remain with his parents or either of them or with the guardian or other person in whose care the child may be found at the time of apprehension,

and, where a child is detained in a hospital pursuant to subparagraph (ii) or paragraph (a) and the medical superintendent or senior medical officer of the hospital advised of such detention, thereafter, for the purposes of this section and the disposal of the case of the child under this Act, the hospital shall be deemed to be a receiving home."

Section 12 provides that a person who has apprehended a child shall within ten days notify the parents or guardians, if any, informing them of the time and place for a judicial investigation of the facts of the case which shall not be more than twenty days from the date of apprehension, and requires such person to make a written report to the director, giving him the circumstances of the case and the same information to be conveyed to the parents or guardians. Subsection (4) is as follows:

> **"The Judge, in an investigation under this section, shall investigate the facts of the case and ascertain whether the child is a neglected child, his age, name and residence and the religion of the child and of his parents or guardian."**

Subsections (5) and (6) provide that in a case where the judge finds that the child is not neglected he must order him ("her" implied) returned to the parents or guardians or guardian, but if the finding is positive a declaration may be made in which event an order may be made under section 15. Before turning to section 15 which is extensive and important, subsection (7) must be noticed:

> **"An order made under Section 15 shall recite the facts so far as ascertained in an investigation under this section and the Judge shall deliver a certified copy of the order to the Director."**

Compliance with this requirement is the subject of comment in chapter VIII.

Then section 15 gives comprehensive instructions for the judge conducting the investigation who, by section 14 is empowered to consult the wishes of a neglected child in the matter of his own disposition. The first eleven subsections of section 15 are material.

> **"(1) Where it appears to a Judge that the public interest and the interest of a child declared by him to be a neglected child or of any child against whom an offence has been committed may be best served thereby, the Judge may, subject to subsection (7) of Section 12, make an order**
>
> **(a) that the child be returned to his parents or guardians or other person in whose care he may be, subject to supervision by the Director;**
>
> **(b) that the child be committed temporarily or permanently to the care and custody of some suitable person, subject to supervision by the Director; or**
>
> **(c) that, subject to subsection (3), the child be committed temporarily or permanently to the care and custody of the Director, who in his discretion may order that the child be placed in a foster home, training school or other institution which has been approved by the Minister for the care of delinquent or neglected children.**
>
> **(2) Where a child is, by order under subsection (1), committed temporarily or permanently to the care and custody of**
>
> **(a) a person under paragraph (b) of that subsection; or**

(b) the Director under paragraph (c) of that subsection,

the Judge may in such order, or any later order, order any parent or guardian or other person responsible for the maintenance of that child to provide maintenance for that child in such weekly, bi-weekly, semi-monthly or monthly sum as he considers reasonable and payable to such person or persons on behalf or that child as he may direct, and

(c) the Judge may make any such order for maintenance retroactive to any date not sooner than the date of the committal under the said paragraph (b) or (c),

and the provisions of this subsection shall, *mutatis mutandis,* apply to orders made under subsection (4) or (7).

(3) A neglected child who is or is apparently under the age of twelve years shall not be committed to an institution unless an attempt has first been made to provide for that child in his own home or in a foster home.

(4) Where a child has been committed temporarily to the care and custody of

(a) a person under paragraph (b) of subsection(1); or

(b) the Director under paragraph (c) of that subsection, the Director or welfare officer or some other person authorized by the Director in writing shall during the period of temporary commitment or at or after the expiration of that period bring the matter again before the Judge for further and other consideration and action and if the parents or guardian of the child have been notified in accordance with subsection (5) the Judge shall thereupon enquire and determine whether the circumstances justify an order returning the child to his parents or guardian or other person in whose care he may have been or a further order under this section, and the Judge shall make such order as the circumstances of the case require.

(5) The Director or a welfare officer or some person authorized by the Director in writing shall notify the parents or guardian of the child of the time and place of the enquiry referred to in subsection (4).

(6) Evidence taken at a prior hearing and the order of temporary committal made after the prior hearing may be admitted as evidence in an enquiry under subsection (4) without proof or on such proof as the Judge may require.

(7) At any time pending the final determination of an enquiry under subsection (4) the Judge may make such order for the temporary detention and care of the child as he deems proper.

(8) Notwithstanding any other provision of this Act, when a child is committed temporarily under this Act to the care and custody of the Director, the commitment shall be made for a fixed period not exceeding twelve months, but in no

case shall an order be made at any time which would result in the continuous temporary commitment of the child beyond thirty-six months from the date of the first order for his temporary commitment.

(9) When an order has been made under this section, a Judge may, upon application of the director or of a welfare officer or of any person designated for the purpose by the director or of a parent or guardian of the child to whom the order relates or of any person entitled to make a complaint in respect of that child,

(a) vary the order from time to time;

(b) terminate any commitment or order for maintenance, temporary or permanent, or both such commitment and order for maintenance, made in the order; or

(c) terminate any commitment or order for maintenance, temporary or permanent, or both such commitment and order for maintenance, made in the order, and to make any order (hereinafter in this section referred to as a "further order") that he could originally have made under this section,

if such Judge is satisfied that

(d) there has been a material alteration in the needs or circumstances of the child or of any person against whom an order for maintenance is made under this section; or

(e) the welfare of such child is for any reason best served by such

(i) variation,

(ii) termination, or

(iii) termination and further order,

and the provisions of this subsection apply to any further order made under paragraph (c) of this subsection, and

(f) evidence taken at any prior hearing and any prior order relevant to the matter being considered by the Judge may be admitted as evidence for the purposes of this subsection (9) without proof or on such proof as the Judge may require.

(10) Without limitation of the generality of his powers, a Judge making an order for maintenance under this section may, in any case where there is a pension or income payable to the person against whom the order for maintenance is made and capable of being attached, after giving the person by whom the pension or income is payable an opportunity of being heard, order that such part as the Judge may see fit of the pension or income be attached and be paid to such person or persons as the Judge may direct, and such order is authority to the person by whom the pension or other income is payable to make the payment so ordered, and the receipt of the person or persons to whom the payment is ordered to be made shall be a good discharge to the person by whom the pension or other income is payable.

> **(11) Subject to subsections (15) and (16), if a child who has been committed to the care and custody of the Director reaches the age of sixteen years while in such care and custody, the Director may, if he considers it advisable so to do,**
>
> **(a) continue his care and custody of that child until that child reaches the age of nineteen years or until some earlier date considered advisable by him; and**
>
> **(b) continue his maintenance of that child until that child reaches the age of twenty-one years or until some earlier date considered advisable by him."**

Subsection (5), limiting as it does the length of a period of temporary wardship to a maximum of three years, and requiring renewal at the conclusion of each twelve month period, has presented problems; owing to failure to observe its provisions strictly the status of certain wards of the director has been compromised, although not as far as the commission knows attended by any harmful results. Generally the practice at wardship hearings before a Provincial Court judge, and involving an application for either temporary or permanent guardianship for the director, required the attendance of the social worker investigating unassisted by counsel if uncontested, and in a case where the application was contested by the parents or other interested parties, the director would ask a solicitor on the civil side of the department of justice to provide counsel. In 1975, and for years afterwards, this solicitor was Mrs. Mary Elizabeth Noonan (now the Honourable Madam Justice Noonan of the Unified Family Court located in St. John's) whom F.J. Simms regarded as his appointed legal adviser.

The only other section of the statute as it stood in 1975 requiring notice here was section 49 providing as follows:

> **"(1) Every person having information of the abandonment, desertion, physical ill-treatment or need for protection of a child shall report the information to the Director or a welfare officer.**
>
> **(2) Subsection (1) applies notwithstanding that the information is confidential or privileged, and no action lies against the informant unless the giving of the information is done maliciously or without reasonable and probable cause.**
>
> **(3) Any person who fails to comply with or otherwise contravenes any of the provisions of this section is guilty of an offence."**

The commission's inquiries indicate that this section, so critical as a sanction in the procedure for protecting children, was virtually a dead letter; where prosecution had been suggested the department of justice had in almost every case declined to proceed.

On October 10, 1975 Mr. Murphy, who had resigned in the spring, was succeeded by the Honourable R.C. Brett as minister of social services and continued in that office for three years, almost to the day. He had himself been a social worker for ten years and found his experience as minister, repeated in the years 1985 - 1988, to be "rewarding and awesome". He had the highest regard for his deputy minister, H.V. Hollett, by whom, and by George Pope the assistant deputy minister, he was briefed on taking office, although he heard nothing from his departing colleague. Since the departments of education, health and social services regularly presented the largest estimates to the House of Assembly the "awesome" appears to have been justified. He had no direct contact with F.J. Simms unless the latter was accompanied by the deputy minister, and generally speaking he had difficulty, as he looked at it in retrospect, receiving information from his permanent officials and knew nothing of any of the sensitive matters with which this commission is concerned transpiring in 1975 and 1976 and involving his own department and that of justice.

A list of the administrative staff of the department appears in the 1975 annual report cited above, and shows in addition to Hollett, Pope and Simms, already identified, the Assistant Director of Child Welfare, Sheila Devine who was herself assisted by Neil Hamilton as Co-ordinator of Child Welfare and Child Protection Services. The administrator of the St. John's region was Jerome Quinlan. In November 1972 Catherine Cahill (now Sinclair) became supervisor for child welfare and corrections at the St. John's district office which administered the department's programmes over an area from Pouch Cove to Mount Pearl, and held this position until July 1975, being succeeded by Sharron Callahan. Both these officers were experienced social workers who, in accordance with the practice of those days, had borne a mixed caseload in various parts of the province outside St. John's. Catherine Cahill had begun as a welfare officer in 1965; in 1969 she went back to Memorial University and obtained a Bachelor of Arts degree with a social work major. Sharron Callahan obtained a similar degree before entering the service in 1968. Their experience illustrates a process which was consciously pursued by the department in allowing social workers and others to acquire their university qualification after entering the service in cases where there was none, and indeed none had been required at the time of their recruitment. As time passed the academic qualification of a baccalaureate in arts with a social work major, later becoming the degree of Bachelor of Social Work, was the preferred qualification for entry and later the requirement. In the case of Robert Bradbury, though specializing in corrections, his position as liaison officer with Mount Cashel gave him a foot in the child welfare camp after the corrections function had been separated from it.

* * *

The Police

In more ways than one the Royal Commission is indebted to Superintendent Leonard Patrick Power of the Royal Newfoundland Constabulary, who testified on four occasions and was a member of one of the panels of experts which advised the commission at public sessions in June 1990. He joined the force in 1964 as a constable in St. John's having undergone recruit training at Fort Townshend. After two years of uniformed work in the Patrol Division he became a plain clothes officer in the Criminal Investigation Division which was not reorganized into specific sections until 1973. He remained a detective, as constables in the C.I.D. were styled, until 1982 when he became a detective sergeant and then rose rapidly, becoming lieutenant in 1984 and superintendent as officer in charge of the division in 1987. It fell to him, and he was specially charged by the Chief of Police to investigate from the point of view of law enforcement, the whole ground covered by this commission's mandate under article I of the terms of reference, in the course of which there was a fruitful exchange of information between him and his officers and the commission's counsel and investigators. I have relied with confidence on his testimony, and that of the current Chief of Police Edward J. Coady and his predecessors E. Donald Randell (1984 - 1987), Richard J. Roche (1980 - 1984), Allan Dwyer (1970 - 1972) and Edgar A. Pittman (1956 - 1970) to name them in an order receding in time, all of whom testified to the commission. Missing from the list are John R. Browne (1976 - 1980) deceased, and John F. Lawlor (1972 - 1976) who did testify on two occasions, but on whose evidence, for reasons which will be made plain, I cannot rely in important particulars. In addition to this counsel have placed materials in my hands that have fleshed out the *viva voce* evidence of police witnesses. Since this report is not directed to the uninformed reader, it is perhaps only necessary to note that the Newfoundland Constabulary (since 1981 the Royal Newfoundland Constabulary) has a history almost coinciding with that of the Northwest Mounted Police in Canada, and until the establishment of the Ranger Force by the Commission of Government, was responsible from 1871 for the policing of all of Newfoundland and its dependencies. Thereafter the system which reduced the Constabulary to a municipal force, confined to the city of St. John's and its immediate surroundings, and consigned the vast rural and wilderness part of the colony to the Ranger Force, was extended by provincial acceptance in 1950 of contract police services provided by the Royal Canadian Mounted Police as in the case of all other provinces of Canada except Ontario and Quebec whose provincial forces alone survived the stringencies of the great depression. The commission was also furnished with evidence from officers of that force, and particularly as to the broad picture by Superintendent Emerson Havelock Kaiser, Criminal Operations Officer for "B" Division and, as it were, Superintendent Power's opposite member in the contracting service. But here again the commission must take its stand first in the temporal environment of 1975.

In that year the Constabulary's C.I.D. as organized under the chief and assistant chief of police presented a picture illustrated by chart 2[21] in appendix A. J.F. Lawlor was chief of police; J.R. Norman was assistant chief and the deputy assistant chief was J.R. Browne who was to succeed Lawlor, himself predeceased by Norman. In the Constabulary's annual report to the Minister of Justice and Attorney General as at December 31, 1975 the officer in charge of the division was shown as Inspector Chesley Yetman. There were twenty-one detectives in 1975 distributed among the various sections of the division shown at the bottom of the chart; these were reinforced by an additional ten in 1976. Over each section was a detective sergeant, usually, as Superintendent Power told the commission, not assigned to any particular investigation, but receiving from the officer in charge or his lieutenant cases for investigation to be assigned to his section staff individually. Caseloads were heavy, averaging thirty-eight to forty investigations per man. Names of future significance to the commission occur in the Assault Section presided over by Detective Sergeant Arthur Pike and containing Detectives Robert Hillier and Ralph Pitcher. The force considered itself very much part of the department of justice to whose head it reported, and whose minister, the Honourable T. Alexander Hickman, Q.C., and deputy minister Vincent P. McCarthy, Q.C. had their photographs in the annual report of 1975 preceding those of the chief, assistant chief and deputy assistant chief.[22]

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[21] Exhibit C-0028D.

The Constabulary Act R.S.N. 1970, c.58 which reconstituted and continued the Constabulary Force of Newfoundland referred to in the *Constabulary Act* R.S.N. 1952, c.26, charged the minister with its administration, and provided in section 8:

> **"Subject to Section 28, the Chief of Police has, under the direction of the Minister, the control and management of the force and of all matters connected therewith."**

Section 28 conferred on the Lieutenant Governor in Council the power to make regulations in certain enumerated matters.

Although the evidence given by police officers aware of the situation prevailing in 1975 and 1976 indicates that they regarded the Constabulary as an integral part of the department, the *Department of Justice Act* R.S.N. 1970, c.85 does not lend authority to that view. Section 9 outlines the duties of the minister and subsection (c) says that he shall "have the superintendence of all matters connected with the administration of justice in the province not within the jurisdiction of the Government of Canada." Subsection (a) of section 10 similarly outlines the powers and duties of the attorney general who is by law the minister of justice in terms which may be unique in Canada:

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[22] Exhibit C-0029.

> **"The Attorney General shall**
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> **(a) be entrusted with the powers, functions and duties which belong to the office of the Attorney General and Solicitor-General of England by law or usage, so far as the same powers, functions and duties are applicable to the province, and also with powers and duties which belong to the office of the Attorney General and Solicitor-General under the laws of Canada and of the province to be administered and carried into effect by the Government of the province."**

The minister, by this enactment, may well have been vested with powers enjoyed by no other provincial attorney general in Canada, yet he was not granted the powers of the Secretary of State for Home Affairs in England, more familiarly known as the Home Secretary, who is responsible to Parliament for the Metropolitan Police in London as well as constabulary elsewhere. Thus, other than the provision in the *Constabulary Act* giving him its administration, and doubtless making him the spokesman for the force in the House of Assembly, any legislative sanction for the close control over the Constabulary which his department undoubtedly exerted was confined to the provision of funds, which in practice may be sufficient. Nevertheless the applicable legislation was conducive to no such independence for the Constabulary as was enjoyed by the R.C.M. Police. In the case of the latter force the evidence indicates that its behaviour toward the minister and his officers was correct, but unbending in some particulars, where the Constabulary was accustomed to be more compliant.

During the year 1975 the department was suffering from certain critical shortages of staff and the need to expand. For instance John Connors, Q.C., recruited from Nova Scotia by Mr. Hickman to be Director of Public Prosecutions had left in mid-year to take up a post in Alberta. He was replaced by John Kelly in March of 1976; in the meantime, and in a critical period as far as this inquiry is concerned, his functions were discharged by the deputy minister himself whose experience was largely on the civil side of the department's work. The only assistant deputy minister in 1975, George B. Macaulay, Q.C. was an experienced Scottish draftsman whom Hickman had recruited to strengthen the department in that technique. It goes without saying that Mr. Macaulay, who testified to the commission, was not and did not claim to be particularly conversant with the criminal law. When Lillian Dingwell, the departmental personnel clerk, gave her evidence she was able to furnish an alphabetical list of the whole staff of the department numbering forty-nine persons, of whom six were Crown prosecutors answerable to the director of public prosecutions, and thirteen solicitors reporting to the assistant deputy minister. One member of the department, Frederick Squires, the inspector of legal offices, was pressing for a reorganization, and memorialized the deputy minister to that effect with the strong support of Macaulay.[23]

* * *

Education

No inquiry into the condition of children generally or as wards of the state would be complete without reference to the system of education peculiar to Newfoundland. Here again I must resist the temptation to explore history and origins within the too brief compass of this report but, once again taking a stand at 1975 - 1976, we find as successor to the much amended *Education Act* R.S.N. 1952, c.101, the *Education Act 1960*, S.N. 1960, No.50, amended almost annually until in turn superseded by the *Schools Act*, S.N. 1969, No.68 which was incorporated in the revision of 1970 as amended and as chapter 346. The peculiar structure of the system of education prevailing in the province which, because of entrenched sectarianism is not likely to be disturbed in the foreseeable future[24], is embodied additionally in the *Department of Education Act*, S.N. 1984, c.46, but in 1975 - 1976 it was the *Department of Education and Youth Act*, R.S.N. 1970, c.80, the title of which was altered to delete the words "and Youth" *inter alia* by S.N. 1973, No.35, s.2. The statutory sanction for the denominational partnership over which the minister presided then and presides now is to be found in section 16, which, as amended in 1971, read at the conclusion of 1975 as follows:

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[23] Exhibits C-0180 and C-0227B.

> **"(1) A religious denomination for which there existed, immediately before the date of the enactment of this Act, legislative provision for a Superintendent of Education in the Department of Education, as such Department existed immediately before the date of the enactment of this Act, shall**
>
> **(a) alone; or**

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[24] Written before the appointment of the Royal Commission in that behalf.

(b) jointly with any one or more or all of the remaining such religious denominations

establish a Denominational Education committee outside the Department for the purpose of representing, and of being recognized by the province as representing, the religious denomination or denominations for which it is established, as the case may be, in carrying out its powers, functions and duties under this Act and any other Act in which reference is made to such Educational Committee.

(2) Each Educational Committee shall appoint as an employee thereof an Executive Secretary to act as the official channel of communication between the Educational Committee and the Minister and the Department, and such Executive Secretary shall

(a) be a member of the Educational Committee; and

(b) be a person acceptable to the Minister and be paid such salary as the Minister may approve.

(3) The Minister shall from moneys provided by the Legislature make to each Educational Committee an adequate annual grant, based on a non-discriminatory formula, for the purpose of paying the salary of the Executive Secretary and of remunerating other necessary employees of the Educational Committee and meeting administrative expenses of the Educational Committee.

(4) An Educational committee shall, subject to any Act of the Legislature prescribing powers, duties or functions of any or all such persons, prescribe and assign the duties and functions of its Executive Secretary and its other employees and notify the Minister as to what duties and functions have been so prescribed and assigned.

(5) Before establishing an Educational Committee under subsection (1), the religious denomination or denominations concerned shall furnish the Minister with any copy of any proposed constitution, regulations bye-laws and rules prepared for such proposed Educational Committee.

(6) Upon the establishment of an Educational Committee, the Educational Committee shall furnish the Minister with a copy of the constitution, regulations, bye-laws or rules thereof then in existence.

(7) As often as any constitution, regulations, bye-laws or rules of an Educational Committee are amended or made, the Educational Committee shall furnish the Minister with a copy of the constitution, regulations, bye-laws or rules as so amended or made.

(8) The financial year of the Educational Committee shall correspond with the financial year of the province.

(9) Each Educational Committee shall, not later than the thirtieth day of September in each year, prepare and submit to the Minister a financial statement, on a form prescribed by the Minister, setting forth the assets and liabilities

of the Educational Committee and the receipts and expenditures of the Educational Committee for the previous financial year, together with a report concerning the work of the Educational Committee during the previous financial year.

(10) Nothing in this section shall prevent any Educational Committee from

(a) according representation on it to; or

(b) permitting observers at its meetings from religious denominations not referred to in subsection (1), and where representation is accorded to any religious denomination under the provisions of paragraph (a) of this subsection (10), the Educational Committee may, unless the Educational Committee otherwise directs, represent that religious denomination as if it were one of the religious denominations for which it is established under subsection (1).

(11) Every Educational Committee is a corporation.

(12) A member of the House of Assembly or an employee of the Department shall not be a member of any Educational Committee."

The revised statutes of 1970 did not come into force until 1973, so that amendments made by the *Statute Law Amendments Act*, S.N. 1971, No.32, s.2 were incorporated in chapter 80 of the revision.

In the schedule to the *Schools Act*, R.S.N., 1970, c.346 the names and boundaries of the educational districts are given at length as follows:

> **"Part I: The Integrated Districts (for group composed of Anglican Church of Canada, United Church and Salvation Army religious denominations);**
>
> **Part II: The Roman Catholic Districts;**
>
> **Part III: The Pentecostal Assemblies of Newfoundland District;**
>
> **Part IV: The Seventh Day Adventists District; and**
>
> **Part V: The Presbyterian District."**

This provision was in place in 1975 - 1976 and has not been amended although in fact the Presbyterian District has ceased to be operational and has become the responsibility of the Integrated Districts. The schedule contains the names and boundaries of twenty districts for the Integrated Districts and fifteen for the Roman Catholic Districts. For the remaining denominations the school districts were described as "the whole province". Each of these districts was administered for educational purposes by a school board and the Roman Catholic School Board for St. John's had jurisdiction over an area described as follows:

> **"St. John's Educational District shall extend from Indian Pond exclusive in the Electcral District of Harbour Main northward to Cape St. Francis and then southward to the south head of Petty Harbour, then inland to Indian Pond exclusive in the Electoral District of Harbour Main and shall include Bell Island."**

Nevertheless in the course of the evidence given by William Whelan, superintendent of that board since 1982, he said that there were only twelve Roman Catholic School Boards and, since the terms of the statute were not put to him, it may be concluded that at least three of the districts have been subject to amalgamation, joint administration or extinction. In 1975 there were he said, twenty-one members of the St. John's board, three of whom were nominated by Archbishop Skinner and eighteen elected at dates coinciding with the regular municipal elections.

The board's functions, exercised in the administrative sense by the superintendent, included the hiring of teachers and for all practical purposes their termination in a proper case; these consisted of religious and lay employees. All those hired had to be certified by the Teachers Certification Committee situated within the department approved by the Roman Catholic Education Committee (now Council) being one of the denominational committees established by law and representing the Roman Catholic community across the province. Statutory authority for the exercise of its functions by this body is contained in the *Education (Teacher Training) Act*, R.S.N. 1970, c.103 which in section 6 provides for a board of examiners for each "recognized denomination", required to adopt its own constitution subject to the approval of the government and of the appropriate denominational education committee. Each board was responsible for recruiting and selecting pupil teachers "from persons who are adherents of the recognized denomination requested by the Board"; examining candidates for positions as pupil teachers and for teaching certificates but not including inquiries into academic or professional qualifications; "for recommending to the Committee" - and here by reference to the definition section one finds that this is the teachers certification committee the establishment of which does not appear until section 9 - the cancellation of a certificate in the case of a teacher who is guilty of "drunkenness, gross misconduct or incompetence"; and recommending to that committee the suspension of any such certificate.

Section 8 creates the office of Registrar of Teachers to be appointed by the minister and to act as a member of the committee, his principal function being to examine the qualifications of all those aspirants recommended by the board of examiners. Then at last section 9 establishes the teachers certification committee to include the registrar, the executive secretaries of all of the denominational educational committees, a departmental officer and four others appointed by the government, two of whom represent the faculty of education of Memorial University and the other two the Newfoundland Teachers' Association. The denominational education committee in the case of the Roman Catholic community was of course the Roman Catholic Educational Committee, familiarly known as the "C.E.C.".

Detailed evidence as to the constitution and practice of this body was given by its current executive officer William O'Driscoll, from which was developed together with that of Mr. Whelan, chart 3[25] in appendix A showing the organization of the St. John's Roman Catholic School Board in 1975 and chart 4[26] showing the organization of the Roman Catholic Education committee and the communication with the teachers certification committee. What emerges for the period 1975 - 1976 at least, is a patriarchal system originally, i.e. before

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[25] Exhibit C-0032B.

[26] Exhibit C-0033B.

1968, not only presided over but dominated by the Archbishop of St. John's who was closely involved with the board and attended its meetings. After 1969 the Roman Catholic Education Committee took his place and that of the Bishops of Grand Falls and St. George's, but he and his fellow bishops in Newfoundland - by 1975 joined by the newly appointed Bishop of Labrador - Schefferville, formally presided over the committee as co-chairmen. These prelates were also honorary chairmen of the board of examiners which was in all respects tributary to the denominational committee, the executive secretary of which was chairman, and the executive officer secretary of the subordinate board, the remaining membership being appointed by the committee itself.[27] It came as somewhat of a shock to Mr. O'Driscoll when Mr. Day pointed out that appointments to the board of examiners were in the last analysis made by the Lieutenant Governor in Council as provided in the *Education (Teacher Training) Act*, section 5. As to the membership of the all-powerful committee its constitution[28], as amended in 1984 but in essence the same in 1975, provides in section 6 that "the Council shall consist of not more than twenty-seven (27) members comprising the following:

"(1) The Archbishop of St. John's;

(2) The Bishop of Grand Falls;

(3) The Bishop of St. George's;

(4) The Bishop of Labrador-Schefferville;

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[27] Exhibit C-0035.

[28] Exhibit C-0034.

(5) Nine members appointed in writing by the Archbishop of St. John's, this number to include one Roman Catholic nominated by and from each Roman Catholic School Board in the Archdiocese and approved by the Archbishop;

(6) Five members appointed in writing by the Bishop of Grand Falls, this number to include one Roman Catholic nominated by and from each Roman Catholic School Board in the Diocese and approved by the Bishop;

(7) Five members appointed in writing by the Bishop of St. George's, this number to include one Roman Catholic nominated by and from each Roman Catholic School Board in the Diocese and approved by the Bishop;

(8) Two members appointed in writing by the Bishop of Labrador-Schefferville, this number to include one Roman Catholic nominated by and from the Roman Catholic School Board of Labrador and approved by the Bishop;

(9) The Executive Director of the Roman Catholic Education Council;

(10) One member nominated by the Association of Roman Catholic School Boards of Newfoundland and Labrador and appointed by the Roman Catholic Education Council."

In 1975 - 1976 the member nominated by the last named association, also appointed by the committee, was not provided for.

Mr. Whelan's evidence made it clear that for historical reasons there was a double standard in hiring teachers. The religious, being Jesuits, Christian Brothers, Sisters of Mercy and Sisters of Presentation, were naturally assumed to be of good character, and were put forward by, or sought from their respective congregations by the school board on a regular basis; the lay applicant had to supply evidence of good character, usually from the parish priest, before a recommendation for certification would be made. In his eight years experience Mr. Whelan had never known the nomination of a religious to be rejected, and he had only asked the congregations to remove two persons who had proved to be unsuitable. Nor were these witnesses aware of any decertification of a teacher occurring in their experience, except in one isolated case not associated with any of the events examined by this commission.

Mr. Day's questions were directed to examination of the mechanism of response in cases where teachers were the subject of complaints of child abuse. Not to put too fine a point upon the answers he received from both Mr. Whelan and Mr. O'Driscoll, the legislative framework made ample provision for the consideration of complaints against certified teachers actually teaching, but until the last year or two there had been little done in the way of disseminating information as to complaints, or resulting decertification, to educational authorities outside the province, doubtless because of the almost complete absence of decertification in any event. Legislative provisions and organization charts tend to conceal the fact that power, if not authority, was, in practice, in the hands of the permanent officials; the executive officer as far as the Board of Examiners was concerned, the executive director in the case of the Roman Catholic Education

Committee and the departmental official, the registrar, for the all-denominational teachers certification committee. The registrar, indeed, considered all applications for teaching positions, assembled the documents in each case and sent them down to the boards of examiners to await the upward process through them and the denominational committees. Analysts of constitutions might be dismayed to know that Mr. O'Driscoll was not only a voting member of the board of examiners of which he was secretary, but also of the teachers certification committee; nor was this exceptional or confined to the Roman Catholic aspect of the system. But the mechanism of response was rarely tested and in the case of the Christian Brothers teaching in 1975 and 1976, not at all.

Additional evidence from the point of view of the non-sectarian department of government was given to the commission by Dr. Boyce T. Fradsham and through him a third chart, chart 5[29], appendix A, was entered in evidence showing the minister and deputy minister in succession and, as responsible to the latter, two assistant deputy ministers and a director of administration to whom the registrar and the teachers certification committee appear to be tributary. Dr. Fradsham himself when he testified was assistant deputy minister of Educational Operations and was at one time a superintendent of education for the Pentecostal School Board. His post was not in existence in 1975, the two assistant deputy ministers then in office being entitled "academic" and "vocational and technical" respectively, the former in charge of whatever functions were exercised within the department in relation to primary and secondary education and the latter having some of the responsibilities for vocational and technical educational programmes of a post-secondary school nature. His evidence confirmed, and indeed enhanced the primacy of the registrar who acted as chairman of the teachers certification committee which met some twelve to eighteen times a year, but in the main performing himself the functions which are designated by section 12 of the *Education (Teacher Training) Act, supra*. The witness was quick to say that if a matter of unusual importance or difficulty was laid before the registrar he would consult the committee. Where suspension or decertification was contemplated it would be initiated by a board of examiners and disposed of by the full committee. In 1975 and, perhaps, even today there was no provision in any legislation, either substantive or subordinate, for informing the registrar where a board of examiners had considered an application by a superintendent for suspension or decertification and dismissed it, and there was no way in which he might entertain such an application in the first instance, being obliged to refer the matter to the board of examiners if an application was made to him direct. Moreover a dialogue between the departments of education and justice had developed over the question of whether the teachers certification committee could decertify in the case of a certified teacher who was not teaching. Justice had expressed the opinion that there was no authority to do so, and amending legislation was, so Dr. Fradsham believed, being contemplated at the time he gave evidence in September 1989. He thought, however, that the process of exchanging information by registrars and certification committees across Canada as to suspension and decertification had been begun before he joined his department in 1981 and was now fully operative.

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[29] Exhibit C-0036.

Chapter II

I must now turn to the events of late 1975 and early 1976 which article I of my terms of reference expressly provides for, but not overlooking an earlier event in October 1974 which cast a shadow, brief and quickly fading, from Mount Cashel to Harvey Road.

Chapter III: De Profundis

Brenda Lundrigan and Johnny Williams

Brenda Ann Marie Lundrigan came from Ontario to testify to the commission on September 20, 1989 immediately following the evidence of John Cyril Williams and Dereck O'Brien. Fourteen years and eleven months before all three had been involved in an episode of juvenile initiative without precedent in the latter-day annals of Mount Cashel. Brenda was sixteen or seventeen years old, had been in care in a foster-home but was going to school in St. John's, and had connections in Mount Cashel in the shape of two brothers, two young cousins, Johnny and Jerome Williams, and her friend Dereck O'Brien about a year or two younger. She was familiar with the orphanage since she went there for swimming lessons, and was in the habit of frequenting it, as she said, sometimes three or four times a week. On one such visit at the end of October she learned that Dereck's young brother Ronnie had been beaten, as had Johnny Williams in a more spectacular fashion, by Christian Brothers. Dereck O'Brien had seen extensive marks and bruises on Johnny Williams' back, arms, legs and hip and he reported this to Brenda whose immediate reaction was to suggest a visit to the St. John's district office of Social Services at Harvey Road. Brenda's inspection of some of these marks enraged her, and the next day, after school, she met Dereck and Johnny and took a taxi cab to Harvey Road. There they were referred by an unidentified female supervisor to Robert Bradbury, who about two months previously had been appointed social services representative for liaison with Mount Cashel.

Robert Bradbury, later a school counsellor in Placentia, left the department in 1978 and when he first testified had considerable difficulty remembering this visitation - a difficulty aggravated by the fact that no documentation could be produced because no record of it has survived. Finally he did under helpful questioning, but had evidently taken no action, at least no recorded action, as a result of hearing Johnny Williams' story, remarkable as it was. Williams testified on oath that he had told Bradbury the story that in essence he told in his evidence. On a Thursday night earlier in October he had observed Brother Edward Patrick English, while saying good night to some forty boys in St. Joseph's dormitory, trying to put his hand into the pyjamas of one of the younger boys who resisted and told him to stop. Although the light was out there was sufficient from the bathroom for him to see what was happening and he thereupon called out "Queer!" at which Brother English turned on the lights and demanded to know who had made the remark. Nobody spoke, and the next morning when getting ready for school Johnny alleged that he was attacked by English in the dormitory and had his shirt torn off. Then, when at the wash basin, he was struck on the back by a massive blow and a fight ensued between Brother and boy in which English was worsted according to Williams, but he himself was kicked and struck and suffered many abrasions and bruises. Williams perhaps forcibly induced English to accompany him to the superintendent's office, from which the boy was peremptorily ordered out by Brother Kenny after an exchange between him and English in which the latter accused Kenny of being "gay" also.

Brenda Lundrigan and Dereck O'Brien had seen these bruises in the gymnasium at Mount Cashel perhaps a day or two later.

At first Johnny refused to go to Harvey Road when urged to do so but later agreed. How much later was not clear, but at least when the expedition to Harvey Road took place a hand-print had disappeared from his back, but he said he had shown the bruises to a teacher, Mrs. Wall, at St. Pius X school. She had shaken her head, at which he burst into tears.

According to Brenda and Johnny, Robert Bradbury listened to their story which included allegations of sexual abuse and took a few notes, said the department had previous complaints and further that he would be looking into affairs at Mount Cashel. No doubt he was wary of this recital, particularly since the bruises had become less conspicuous. In view of his limited responsibility for what transpired in Mount Cashel, confined to documentation of placements and transfers, provisions for clothing allowances, health care certificates and so forth, and the undoubted fact that all questions of the quality of care were ordained to be the sole concern of social services headquarters at the Confederation Building, it is not surprising that he did not intervene in person at the orphanage to investigate this complaint. His supervisor, Catherine Cahill, had no recollection of Brenda Lundrigan, Dereck O'Brien and Johnny Williams visiting Harvey Road.

The testimony of Johnny Williams delivered with great earnestness, but with a certain air of bravado which left me with mixed feelings, was dramatically corroborated in important particulars when its second day concluded on September 20, 1989. Overnight a Mr. Christopher James Hatch, then teaching at Bay de Verde, had listened to the telecast of Johnny's evidence the night before, and had applied urgently to commission counsel to testify forthwith. In September 1974 he had been a substitute teacher at St. Pius X school in St. John's in the field of "special education", or instructing pupils with learning disabilities. Johnny was not in his class but in that of Marcella Whalen; yet he and Johnny had become friends. In the first term Johnny had come into Mr. Hatch's classroom crying and saying "Mr. Hatch, he beat the shit out of me". Hatch said there were many bruises on his body and when asked who had done it Johnny said "Brother English". Hatch then took him to see Mrs. Whalen who eventually said, "What can I do about it?" and as he ruefully admitted he did not do anything himself. He was not aware of Section 49 of the *Child Welfare Act, 1972* as he said when it was put to him by counsel, but he had thought about it, and talked about it many times since, and had made inquiries about Johnny Williams among the staff. At the time Hatch testified he had not seen Johnny since 1975, but described his experience as a "thorn in his side" something which he had never forgotten. He was clearly much moved by the desire to make amends for what he had considered an injustice and an inexcusable failure on his part to press the matter in 1974. It should be remembered in his favour that he was only twenty-five years old and on the verge of his first permanent teaching job, something which was all the more desirable in view of his experience as a substitute teacher. He commented on the welts on Johnny's chest when he opened his shirt, which appeared to be inside rather than outside his skin; he had not seen anything like it before or since.

On another occasion Johnny Williams told circumstantial and disturbing tales about sexual abuse, and implicated a Christian Brother by the name of Gordon Buckingham which produced an immediate reply before the commission from Brother Buckingham who came all the way from Vancouver to pronounce any association of this kind on his own part as completely false. Brother Buckingham was respected and trusted by many other former residents of the orphanage who testified and the type of aberration attributed to him by Johnny Williams was completely out of the character thus given to him. But Brother Buckingham, in spite of his shock at the accusation, spoke compassionately of Williams who was only a little boy when Buckingham had last seen him at Mount Cashel; a little boy who had first entered the orphanage from a broken home in Placentia at the age of seven. He described him as a difficult child, given to emotional outbursts, and one who had been avoided on this account even when very young. There is no doubt that as he grew older he became a terror to the staff at Mount Cashel, and this, no doubt, had been one of the reasons for Brother English meekly accompanying him to the superintendent's office after the vicious encounter which had caused Johnny's injuries. There is no question in my mind that Johnny's account of this episode in October 1974, corroborated by Dereck O'Brien and Brenda Lundrigan and given eventually cautious confirmation by Robert Bradbury, was sincere and not mischievous.

Williams said that from that day to this he had never heard anything from the department of social services although he had given statements to the police. What is to be made of this unaccountable silence? Robert Bradbury remembered a visit from a young girl and a boy but had no memory of any complaints of sexual abuse. He felt sure that a report had been made although the department's file on Johnny Williams did not contain one. As to this it was a headquarters file from the Confederation Building which had eluded search by commission investigators till the actual time of Bradbury's second appearance as a witness on September 22, 1989.

There was nothing in it dealing with the incident of Brenda Lundrigan's visit with the boys, or in any Mount Cashel file either at headquarters or the district office, not even the fugitive notes which he evidently made.

But Mr. Bradbury was to get another chance.

* * *

Although Johnny Williams said that he had told the story of his visit to Harvey Road in 1974 to half the people in Placentia in the summer of 1975 and to two politicians who had befriended him, the local member for the House of Assembly and the minister of mines, the commission, with the hundreds of files put at its disposal by government departments and combed by its investigators has been unable to find any document alluding to it. The department apparently continued to keep a respectful distance between its officers and the directing staff of Mount Cashel. There was indeed a complaint that summer by a Mrs. Ruth Williams who attended at the district office at Harvey Road and told social worker Alice Walters - of whom more will be heard - about her nephews at the orphanage, placed there through a "non-ward" agreement with the director by their mother who was dying of cancer. Mrs. Williams had visited the dormitories at Mount Cashel in the normal course and had discovered that one of her nephews was sleeping in filthy sheets on the floor. This produced a long and circumstantial report from Mrs. Walters to Mr. Simms and evidently handled by Neil Hamilton, third in line in the child welfare establishment. The report by Mrs. Walters was dated July 25, and on August 12 Hamilton requested her supervisor to have Robert Bradbury investigate and report, clearly disregarding the limitations of the latter's instructions. Nothing transpired and eventually in October an exasperated Mrs. Williams, who was Simms' neighbour in St. John's, called him on the telephone and was with difficulty placated.

The Earle Family

A more significant complaint must be recorded for early September of 1975. William Michael Earle, now 51 and at the time he testified employed as a security guard, completed grade 11 at St. Bonaventure's College in St. John's. He married Carol Summers at the age of nineteen. They had four girls and three boys, the latter being Richard born 1959, William Ronald known as Billy in 1964 and Shane Michael in 1966, then separated after ten years of marriage. William Earle, a large and susceptible man, soon found himself in difficulties trying to support his family as well as children of his mistress, and looked to Mount Cashel as a solution of his problems. He had always been taught by Christian Brothers and held them in high regard. He knew the superintendent Brother Kenny, Brother Buckingham and Brother Thorne, and he preferred Mount Cashel to a foster-home. He would probably have allowed matters to drift if Carol Earle had proved equal to supporting herself and six children, one being with a grandmother. One by one the Earle boys went into care and were admitted to the orphanage; according to Richard, generally known as Rick, he and Billy had been in a foster home in St. Thomas before going there. In any event Rick went to Mount Cashel in 1968, and was followed by Billy and Shane in 1973. Rick was reasonably happy at Mount Cashel. He liked Brother Connors who was in charge of his dormitory and particularly Brothers Thorne, Buckingham and Barron who he said treated him well, and as long as they were in charge he would not have wanted to leave. Brother Ralph was a different story and gave numerous examples of paedophilia, hugging a naked boy in front of some twenty others with the result that the boy in question, who was a friend of Rick, discussed it with him and they complained to the assistant superintendent, Brother Thorne. Shortly after Brother Ralph left the orphanage, but returned somewhat less than a year later, when his peculiarities again became manifest, to such an extent that, according to Rick, everybody tried to avoid him. After himself being the target of an attempt at sexual contact he left Mount Cashel the next day, and went to live with his father at Queens Road in St. John's.

Billy and Shane Earle stayed in Mount Cashel, and it was not until September 1975 that the former planned to leave after having been punched in the face by a Christian Brother, as alleged, because of an accident for which he did not consider himself responsible. After his friend Bobby Connors complained of having been hit over the eye for something even more trivial, the two boys, at Billy's urging, decided to leave the orphanage and go and tell their story to Billy's father, who was again a married man after obtaining a divorce from Carol in the previous year. The next morning they went down the fire escape and made their way to 32 Franklyn Avenue - Earle's new address - where Bobby Connors had somewhat more sexual abuse to report than had Billy Earle. Physical abuse at Mount Cashel was to be taken for granted according to Bobby; sexual molestation was in his case confined to the activities of Brother Kenny and Brother Ralph, particularly in the swimming pool and basement where showers were taken by boys over the age of nine. Drying naked boys after swimming or showering and fondling their genitals, sometimes putting a tongue in the mouth of the victim was, he alleged, the usual practice. Bobby's mother was dead and he never saw his father, nonetheless living in St John's. He had no one to look to and nowhere to go and was accordingly ripe for Billy Earle's suggestion. The boys were not exactly at one as to what then happened, but evidently William Earle Sr. reacted vigorously according to Bobby, Rick and his father going to Mount Cashel to confront the staff and the next day taking the boys to Harvey Road, but according to Billy doing both on the same day. Rick recalled the expedition to Mount Cashel where he had words with Brother English and his father with Brother Ralph, but he did not specifically recall the sequence of events involving Harvey Road. These discrepancies are not serious, although I prefer Bobby Connors chronology as being more reasonable since he recalls spending the night at Franklyn Avenue before he was taken to Harvey Road.

The Bradbury Report

William Earle and the two boys were received in much the same fashion as Brenda Lundrigan had recounted about the episode of 1974; first by a woman and second, upon assignment as it were, by Robert Bradbury as liaison officer with Mount Cashel. The boys told their stories and they both had the impression that there was either an investigation going on about some previous occurrence, or Bradbury was not inordinately surprised at what they said. According to them he indicated that there had been other complaints and he would see about the matters they were raising. He appeared to be taking copious notes as the narratives proceeded.

William Earle was under the impression that Sharron Callahan had been the little party's first contact; she at the time was Supervisor of Child Welfare and Corrections at Harvey Road and had no recollection of the events of that day but, as will be seen, agreed that at the time she had knowledge of what was afoot. And on this occasion there was a document in the form of a letter to F.J. Simms: Robert Bradbury drew it and he and Sharron Callahan signed it. It is reproduced in full:[30]

"October 23, 1975

Mr. F.J. Simms
Director of Child Welfare
Department of Social Services
Confederation Building
St. John's, Newfoundland

Re: Mount Cashel

Dear Sir:

This report is being submitted for your information concerning allegations recently made against Mt. Cashel by two wards presently there.

A visit was made to this office in early September 1975 by William Earle, his 12 year old son William and a friend of this boy. At that time, they met with Mrs. Sharon *(sic)* Callahan, social worker supervisor and related the following story. Apparently the night before William Junior and, this other boy who is also at Mt. Cashel, had been at the orphanage and waiting in the TV room; they had been requested to do so by one of the Brothers. At that time, Brother English

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[30] Exhibit C-0049.

came to the room also and asked the boys to leave. When they told him that they were waiting for another Brother, he did not believe them and allegedly struck William in the face several times with his fist. The boys then left the orphanage and went to the home of William Earle Sr. to report the incident. Mr. Earle then accompained *(sic)* the boys back to Mt. Cashel and spoke with Brother English and Brother Kenny but felt that they both would not admit the reality of what had happened.

This accusation by the Earle boy is undoubtedly partly on emotional reaction to the punishment deemed justifiable by the brothers; and since the boy had few marks as evidence for severe beating, perhaps little can be accomplished by bringing strong charges at this time. But just the same charges of severe punishment by the Brothers are not new and could indicate a limited but still present level of child abuse in the institution.

Along with this charge the boys further allegated *(sic)* that 2 of the Brothers were known (to most of the boys) homosexuals and that occasions of sexual advance toward boys had occured. *(sic)* They further reported that it was their knowledge that a brother who had been suspended from the orphanage in the past for inacceptable behaviour of this kind was again back.

It must be stressed that these boys were only young (approximately 12) and therefore corraboration would have to be present before their accusations could be taken seriously. However, it would seem to be neglect on our part if some action was not taken at this time. Therefore, it is requested that your consideration be given to the aforementioned events; and the appropriate action suggested. It might be noted that

> **we have spoken to Mr. Earle once since September but that he is now working in Corner Brook. However, he will be in St. John's again November 14 if further information is required from him.**
>
> **Yours truly,**
>
> **'Robert Bradbury'**
>
> **R. Bradbury**
> **Corrections Social Worker**
>
> **'S. Callahan'**
>
> **S. Callahan (Mrs.)**
> **Social Worker Supervisor**
>
> **RB/pw"**

This letter deserved and was given careful study by commission counsel and investigators on various grounds:

1. Two handwritten notes appeared below the signatures of Robert Bradbury and Sharron Callahan, his supervisor, at the end of the second page of the letter. One read as follows:

   > "***Note***
   > **Discussed with**
   > **Brother Kenny who will**
   > **be investigating.**
   > **FJS**
   > **12-11-75."**

   This was in the handwriting of the addressee F.J. Simms. Under that was the following unsigned note,

> **"Minister,**
> **Brother Kenny has now**
> **been charged."**

An undecipherable date stamp appears below the second note but suggests to sharp eyes an impression of "12.75", not necessarily associated with the note to the minister.

2. In the second paragraph references to the alleged striking by Brother English are not entirely consistent with Billy Earle's story and omit any mention of Bobby Connors.

3. Bradbury's statement that "charges of severe punishment by the Brothers are not new and could indicate a limited but still present level of child abuse in the institution" suggests the existence of previous complaints, and as he said, perhaps is an echo of the Johnny Williams complaint of the previous year. His explicit use of the term "child abuse" is significant, particularly in view of the circular of April 1973 distributed to field staff by the director entitled "Guidelines Relating to Child Abuse". These guidelines were comprehensive, describing typical symptoms and the reactions of abusing parents, normal parents, abused children and normal children and obviously compiled by professional advisers. The director's covering letter said in part as follows:[31]

> **"During recent months the number of cases, involving child abuse reported to the Director of Child Welfare has increased substantially. It is not believed that this**

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[31] Exhibit C-0043.

> **is indicative of an increase in the incidents *(sic)* of child abuse but rather an increased emphasis on detecting and reporting such cases by doctors, nurses, teachers, welfare officers, and other interested citizens. Whatever the reason, incidents of child abuse presently being reported in the province of Newfoundland is somewhat alarming and intensifies the need for a well-organized and effective child care and protection program."**

4. The fourth paragraph mentioned the allegation that two Christian Brothers were known homosexuals and "that occasions of sexual advance towards boys had occurred". It would seem that sexual advances were not considered to be child abuse by the writer, and indeed he is justified in that dissociation if one considers the circular of 1973 authoritative.

5. The apparently leisurely response indicated a lapse of at least six weeks between the date of the complaint and the submission of the report. Bradbury suggested that he might have received verbal instructions from the director or one of his assistants after making a verbal report shortly after the interview. But the tone of the letter from him to Simms does not suggest that. He said that he might have paid a visit to Mount Cashel and have asked the superintendent for an explanation, but if this were so he might have been expected to refer to such an unusual occurrence in his report. No doubt both social services headquarters and the St. John's district office were perplexed as to how to proceed, the director having no troops, as it were, to send into the field, other than those from district headquarters, and district headquarters having been instructed not to interfere with Mount Cashel, but

refer all matters of the kind to him. In any event there was a further peculiarity in the nature of the document not associated with its contents.

6. The document quoted above was found in the Mount Cashel file at the department's headquarters in the Confederation Building. It was not an original but a photostatic copy, and as to the incident under consideration here it was all by itself. F.J. Simms, for eighteen years the head of the division of child welfare, retired on March 31, 1989 on the eve of the appointment of this commission. There is no dispute that at some point shortly before his retirement he decided to gather under his hand all the files and their contents for the purpose of segregating reports of complaints about the sexual and physical abuse of children. Assisting in this task was Roberta Joyce Dunne, a social worker (now a supervisor) in the child welfare field at Harvey Road who was brought into headquarters on January 16 of that year to fill the position of co-ordinator of child welfare. She found the files in a state of some disorder, but identified in her evidence a report by a social worker named Stead Crawford in 1982, about which more must be said, and the Bradbury report reproduced above. She said Mr. Simms' note about the reference to Brother Kenny was on it when she saw it in the course of her examination. The original of the document was apparently then in place and Mrs. Sheila Devine, by now assistant deputy minister, also testified that she had seen the document, and that Mr. Simms' note was in blue ink. Superintendent Leonard P. Power, head of the C.I.D. in 1989, also had access to the documents in connection with the reopened police

investigation referred to earlier, and observed Mr. Simms' note, being of the opinion that it was in photostatic form, and had been there when he first broached the subject with Simms at an interview. Well after being involved in the police investigation, and providing what information he could to Superintendent Power, Frank Simms had a strange brainstorm about this document and consulted Alphonsus Faour, deputy clerk of the Executive Council, at the time engaged in considering an action brought by Shane Michael Earle against the Government of Newfoundland and Labrador. Mr. Faour made the following note:[32]

> **"1430-208 SHANE EARLE**
> **NOTE TO FILE:**
>
> **89-06-09**
>
> **2:40 P.M.**
>
> **I had a telephone call from Frank Simms this date who expressed some concern about a report concerning the situation at Mount Cashel from Mr. Bob Bradbury dated sometime in October, 1975.**
>
> **It appears that during the month of March, while Frank was preparing for retirement, he was asked to review his files for the purposes of the police investigation into the Mount Cashel incidents. During the course of reviewing the October 1975 report, he said to me that he discussed it with Mr. George Pope who told him that he remembered the report coming in in 1975, it was discussed with the executive at that**

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[32] Exhibit C-0402.

time and it was decided to discuss the implications with Brother Kenny. Following discussions with Mr. Pope, Mr. Simms said that he penciled a note on it which read approximately as follows:

> "This report was discussed with Brother Kenny - he agreed to investigate the allegations of abuse".

Mr. Simms also said that the note was dated November 1975, even though it was actually written in 1989.

He expressed concern that Superintendent Power, in the investigation of this matter in March 1989, may have obtained the impression that he, Frank Simms, was alleging that the note was actually written in 1975. He wanted to correct that impression and insure that the parties concerned were aware that the note was written in 1989 following his review of the file. He said he could not recall why it was dated November 1975.

I advised him that I was not involved with the criminal investigation of this matter but only in the Defence of the possible civil action against government. In view of this, it would be very helpful in my opinion if he contacted Superintendent Power to discuss the possible misunderstanding with him. Mr. Simms agreed that this was the proper course of action and said he would telephone Superintendent Power shortly. He asked if I knew the telephone number for Superintendent Power and I gave him the general line for the constabulary.

He also indicated a wish to get together with us to discuss this whole episode. I explained that I would be away for the following week, but that Dianne Smith

> **and I, who are handling this matter jointly, would be most interested in getting together with him and other persons concerned once we have had an opportunity to review the documentation on the file.**
>
> **A. Faour"**

Faour said he made this memorandum for the file within ten minutes of talking to Simms at 2:40 p.m. on June 9, 1989. Superintendent Power said he had discussed the matter with Simms and was confident that the note referring to Brother Kenny had in fact been written by the former at the time it was dated. Although Simms had said that he had shown the Bradbury report to his "supervisor", assistant deputy minister George Pope, the latter said he had never seen it either in 1975 or in any discussion in 1989 such as Simms had testified to. The last word, although not the last reflection, might be with the present assistant director of child welfare, Elizabeth Crawford, who did an analysis of the Mount Cashel files for Sheila Devine and wrote *inter alia* on March 31, 1989:[33]

> **"With the exception of a report dated October 1975 from Mr. Robert Bradbury regarding possible physical abuse of William Earl and sexual advances toward boys by two of the Brothers (who are not named). There is no specific reference in our files to incidents that may have occurred. The files indicate that this was brought to the attention of the Superintendent and no other action is mentioned."**

Clearly the first two apparent sentences are one, but it must be concluded that Mrs. Crawford found the file as arid as did the commission's investigators.

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[33] Exhibit C-0403.

Frank Simms eventually, in testimony given on April 5, 1990, assured the commission that the note referring to Brother Kenny's investigation was contemporaneous, made on November 12, 1975 and that he was not uncomfortable about having given that direction at that time. He agreed that it appeared to be inconsistent to have the Christian Brothers community investigating itself, when in the case of a foster home the investigation would be conducted by a social worker. Although he had discussed the Bradbury report in 1975 with George Pope he denied having done so with him in 1989 prior to or after retirement. After retirement he had heard from Sheila Devine that the original of the Bradbury report was missing, and from Roberta Dunne that the original of the Stead Crawford report was also missing after she had seen it in the file. He said that he had not been interested in the Crawford report and after he had examined these files he had "probably" sent all reports back to Mrs. Dunne. As to Ivy Burt's evidence that she had observed two accordion files on the director's desk after he had left the service, he recalled how on his last departure he had looked back and had not only seen nothing, but observed that this was the first time since his appointment that there was nothing left on it.

By the time Simms retired on March 31, 1989 Sheila Devine was, at least in his eyes, his supervisor and has since been appointed a member of the Public Service Commission. Although George Pope, assistant deputy minister in 1975, had no memory of the Bradbury report of October separate from the later events in that year which must next be described, Mrs. Devine assured the commission that he had seen it. She was equally positive about the state in which it went to the

C.I.D. in 1989 - an original with the Simms notation in blue ink. The question must be asked: what has happened to the original of this document and indeed that of the Stead Crawford report of 1982, dealing very specifically and disturbingly with homosexual activities among boys at Mount Cashel? In view of the state of the files generally, and Mrs. Devine's emphatic statement that child welfare files were not subject to any office policy of weeding or stripping, it is difficult to resist the conclusion that these documents have been removed. In any event no action was taken by the department of social services. No other department or agency of the government was informed. This may have been due to the fact, as Frank Simms testified, that this was the first complaint about Mount Cashel that he had received since becoming director. It may also have been due to the privileged position of the Christian Brothers as compared with foster-parents of his wards. In any event he had not heard the last of the family of William and Carol Earle.

* * *

Shane Michael Earle

Shane Michael Earle was placed in Mount Cashel Boys' Home and Training School, as it had been officially known since 1969, on April 4, 1973 at the age of six. On May 18, and pursuant to an order of the Family Court made by Judge M.L. Roberts, he was made a temporary ward of the director of child welfare for one year beginning May 9. Sheila Devine expressed her distress at the practice of placing boys of tender age in an institution like Mount Cashel where there was a very limited teaching female presence, and no "nurture" in the form of affection could be counted on from among the hard pressed Christian Brothers. As Dereck O'Brien said with all his appalling experience of childhood, "little kids need a hug". To be sure Shane's brother Rick was there but soon to leave; also his brother Billy who probably accompanied him and was nine years old but never particularly close to him. The two boys were different, in temperament, Billy being rebellious and at least once a truant in his first two years; Shane was quiet and inoffensive. According to Shane the sexual molestation began as soon as the boys arrived - at the hands of the superintendent. Shane was brought down to the basement to be fitted with clothes and was hugged and fondled, and after being taken for a drive in the country with another boy a more serious invasion of his person was attempted. He found refuge from this sort of attention with Brother Burke who treated him with the greatest kindness as he thought. Shane greatly admired this tall, red-haired figure but his befriending became complicated by sexuality, as to which Shane as a witness gave precise details, culminating perhaps in sadism. He said that for a trivial offence involving a library card he was mercilessly beaten by Burke with the buckle end of a belt. He confided in Billy Earle showing him the injuries. Billy had found a friend in Chesley Riche, an adult who had volunteered to do some maintenance work at Mount Cashel at the behest of the superintendent's brother. Billy and other boys told him of beatings and sexual advances as prevalent in the orphanage, and he had already mentioned the matter to Brother Kenny who said that the children were simply looking for attention. Riche took the two Earle boys on a weekend in early December to Bell Island to see their sister who was in a foster-home. He found Shane withdrawn and Billy told him about the belting by Brother Burke after which Riche took both boys to their mother's house on Duckworth Street.

Chesley Riche

Carol Earle was at a loss, except to examine Shane's black and blue back and buttocks. Chesley Riche, not on good terms with the Constabulary, bethought him of a Corporal McGuire of the R.C.M. Police. McGuire being off duty - and about to have Sunday supper - was good enough to go over to Mrs. Earle's residence and observe a situation out of his jurisdiction. Remarkably enough he had preserved his notes[34] which fixed the date at December 7, 1975 and the time at 4:35 p.m. reading as follows:

> **"75-059-42 - around town.**
>
> **7/12/75,**
>
> **4:35 P.M. Carol Earle, 360 Duckworth St. Shane Earle, age 9, hit by Brother Burke on bottom for losing a library card & telling a lie. Billy Earle, age 11 is in Brother Ralph's Dorm & Brother English a fellow Bobby Connors in Brother Englishs dorm they are also fooling around with.**
> **Shan *(sic)* was beaten in close *(sic)* closet on 6/12/75 after breakfast."**

A curious but not significant difference of recollection between Riche and McGuire, was the former's belief that the officer had taken pictures of Shane's injuries with a polaroid camera. Corporal (now Sergeant) Gerald T. McGuire denied having done so, or ever owning a polaroid camera. But Carol Summers said that a camera was delivered, pictures were taken by her and given to the Constabulary, as indeed was the case.

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[34] Exhibit C-0050.

The next day - Monday, December 8 - Chesley Riche went to the Confederation Building to see "the Minister"; in due course he saw Frank J. Simms. Riche made no mention in his evidence of a preliminary telephone call, although Simms testified that a call was made and that he had invited Riche to come to his office. The interview, somewhat difficult for Simms because of the indignation which was not far below the surface of Riche's approach, lasted, according to the latter, about fifteen minutes; according to the director, about one hour. Riche said that Simms protested that the "Catholic church was on a pedestal" and that there was little he could do. Riche then observed that he would put him and the pedestal on the front page of the Evening Telegram if something were not done. Simms recalled neither of these observations. The contrast between Riche's explosive comments and Simms' precise, even oracular delivery must have been remarkable. At all events the director undertook to do what he could and advised his visitor to go to the district office at Harvey Road in St. John's; he said that after Riche left he had called that office and advised them of what to expect, although he did not remember to whom he spoke. He did remember, however, confiding in Brother Nash. It was common ground that Chesley Riche told the director not only of the physical assault on Shane Earle and other boys, but made "very serious allegations" of child sexual abuse by Christian Brothers in Mount Cashel.

Chapter III

At Harvey Road

The scene shifts to Harvey Road and to the case, or "running" record kept by Mrs. Alice Walters (now Crewe), a child welfare social worker, with responsibility for foster homes but not in the area of 360 Duckworth Street, although temporarily assigned to it in the absence of Mrs. Geraldine Stapleton. Her account of what transpired from the arrival of Mr. Riche to the end of the day at the Charles A. Janeway Child Health Centre in the Pleasantville district of St. John's being contemporary, and recorded as she said very shortly after the events occurred, should speak for itself:[35]

> **"December 8, 1975**
>
> **4:45 p.m. Ms. S. Callahan came to my office to aquaint me with the following: A Mr. Chesley Riche was on his way here from H.Q. where he had seen the Director of Child Welfare about a complaint of alleged child abuse in Mount Cashel Orphanage.**
> **Mr. Riche arrived shortly after. He said that Shane Earle age 9 had been beaten by Brother Burke at Mt. Cashel on Saturday, Dec. 6 and that the child had various bruises on his body as proof. Mr. Riche also said that he had worked at Mt. Cashel for 2 weeks and seen a lot of things he did not like. He also said that he had volunteered his services to install heating for the swimming pool. ... He later changed the work period from 2 to 4 weeks or a month. Together with B. Bradbury I visited Shane's mother at her apartment at 360 Duckworth St where we met Shane and also Mrs. Earle *(sic)* common-law husband ...**
> **The apartment has 3 rooms, living room, kitchen,**

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[35] Exhibit C-0056.

bedroom and bathroom and was spankingly clean. Sheane *(sic)* was asked to show his bruises to Mr. Bradbury, which he did and which appeared to be located mostly on the lower part of the right butt. After discussing the matter somewhat, I requested Mrs. Earle and shane to accompany me to the Janeway Hospital for a medical. I explained that this was regular procedure in a case of suspected child abuse. They agreed to come, while Mr. Riche invited himself along. While waiting at the Janeway, Mrs. Earle told me some of her past history in order to explain why she did not have custody of her 7 children. ... Mrs. Earle said that all of her children had contact with her as 3 of her daughters lived with a aunt on Bell Island, 1 with her grandmother in town, and the oldest boy was with his father in Pasadena, but had been in town 3 weeks ago and came to see her, and 2 boys in Mt. Cashel. Shane who was the cause of our present concern and Billy age 11. These two apparently visit their mother whenever they can.

Dec. 8, 1975

Shane said he had been beaten by Brother Burke with a belt on Saturday morning, because he had lost his library card and consequently lied about a book which he should have returned or borrowed. I'm not sure which. I had explained to the Nurse on Duty why we were there and she contacted her superintendent for instructions as to how to handle the case. She was advised to get an outside MD for the Janeway did not wish to get involved. She contacted Memorial University Family Medical Sercice *(sic)* who apparently have an MD available on after hour calls and sometime later a Dr. Patey arrived (I think that's the correct name). I spoke to him separately and explained the matter to him, he said he'd had to notify the C.I.D. as that was the normal procedure on after hour calls. He

> then examined Shane. He later informed us that though small for his age Shane's development appeared normal in every way nor was there any evidence of injury either new or old.
> He said it appeared that the boy had been hit with a blunt flexible object (most likely a leather belt) about six times and that the brusies were more than a day old but less than a week. During the Dr.'s examination I spoke with the 2 men from the C.I.D. Pitcher, who did all the talking and Cocrane *(sic)*. Mr. Pitcher seemed to recognize, Mr. Riche from somewhere and asked whether his first name was Ches to which Mr. Riche replied, "Right on first time". after that they seemed to be on somewhat familiar terms. During the two hours or so we were at the Janeway, Mr. Riche kept barging into rooms and interrupting conversations. The C.I.D. appeared to be more interested in the Homosexual allegations made by Mr. Riche and I had to clarify several times that the present complaint only concerned a beating not homosexual advances. Home 8:20 p.m."
>
> 'AW'"

At the "Janeway"

As to who first informed the police of the case of Shane Earle - and Mr. Simms claimed to have done so after discussions with his assistant deputy minister - it would appear from the evidence of Detective Inspector Chesley Yetman, then officer in charge of the C.I.D., that it was Dr. Paul Patey, Assistant Professor of Family Practice at Memorial University. Dr. Patey was a native of St. Anthony and at the time material to this narrative, pursuing a distinguished career in teaching and practice which ultimately led to his being a member of the Newfoundland Royal Commission on Hospital and Nursing Home Costs and national president of the College of Family Physicians of Canada. He testified that he was called into consultation by the casualty officer at the Janeway Child Health Centre on the evening of December 8, examined Shane Earle and made a tracing of the bruises on his lower back and buttocks. There he obtained a history from Alice Walters, Carol Earle and Chesley Riche. Shane Earle demonstrated the position which he said he adopted when being put over the lap of his adult assailant, consistent according to Dr. Patey with the incidence of blows as indicated by the bruising. Although the skin was not broken, in his opinion considerable force had been used in the infliction of at least six blows and possibly many more of lesser severity; the marks indicated an irregular shaped end of a flat instrument. He had preserved the tracing, his notes and his report, which were entered in evidence, in a confidential file.[36] The report made for the hospital with copies provided to Mrs. Alice Winters *(sic)* and Detective R. Pitcher, is an illustration of the studied moderation with which an experienced physician describes injuries, and in fairness to all concerned should be recorded here:[37]

> **"The patient was examined at the request of Mrs. Alice Winters, Child Welfare Social Worker, and the child's mother. He was examined in his mother's presence at the Janeway Children's Hospital between 7:00 & 8:00 P.M. on December 8, 1975.**
>
> **Examination showed a normal co-operative, calm, nine year old boy. There were no abnormalities of the internal organs evident on examination. There was no**

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[36] Exhibits C-0059 to C-0061.

[37] Exhibit C-0061.

> **evidence of bony injury or bony abnormality. The skin was clean. His hair was clean.**
>
> **He had a 1 cm. diameter bruise on the medial aspect of the left calf. This appeared to be a week or more old.**
>
> **On his buttocks there were several superficial bruises. The skin was intact. There was minimal swelling. These bruises were approximately an inch in circumference but had a linear extension from them. They were red with very slight green coloration suggesting more than one but less than five day old bruises.**
>
> **There were more on the right than the left side.**
>
> **These bruises could have resulted from pressure from a flexible strip of material between one and two inches in diameter; the bruises occuring *(sic)* when the skin was contacted by the tip and adjacent three or four inches on the strip. Six blows could have accounted for all the bruises on his buttocks. Other possible mechanisms of injury cannot be excluded.**
>
> **No medical treatment was required. Spontaneous healing can be expected without leaving any permanent damage.**
>
> **'Paul Patey M.D.'"**

Dr. Patey said that if he was making such a report now he would be obliged to send it to the department of social services as well as the police, but in 1975 he was only obliged to notify the latter. Sending a copy to Alice Walters therefore would appear to have been a commendable courtesy.

Detective (now Inspector) Ralph Pitcher of the

Newfoundland Constabulary was working with Detective Corcoran of the same force on that Monday evening and both attended at the "Janeway". Pitcher testified at length about the procedure that should have been followed, but was unable to explain why a Citizen's Complaint Form[38] which he would have completed and the file which he would have created to contain it, could not be found. The original Occurrence Book[39] maintained by the police at Water Street was produced to him by commission co-counsel Clay M. Powell, Q.C.; nothing in it had been recorded referring to an assault on Shane Earle or any reference to Mount Cashel for December 8. In any event, it is clear that the police response was provoked by the combined action of Chesley Riche and Carol Earle at the district office of social services in St. John's and the consequential visit to the Janeway Hospital at which Detectives Pitcher and Corcoran appeared.

Detective Jerome Joseph Corcoran who accompanied Detective Pitcher to the Janeway Hospital was a very junior officer at the time and was not a member of the Assault Section but served according to his deposition taken before Mr. Day on January 17, 1990, as either a member of the General Investigation Section or of the Break and Enter Section. The explanation for his association with Detective Pitcher on Sunday, December 7 is that he was on the night shift with the latter and went along as "backup". He had no personal recollection of the events described in Mrs. Walters case record[40] or of anything untoward at Mount Cashel. He eventually obtained commissioned rank as a Lieutenant in the Royal Newfoundland Constabulary in 1986 but had to retire in 1988 because of heart surgery. His deposition contains at paragraph 23, a concise and clear description of the procedure for receiving and recording complaints which is as follows:[41]

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[38] Exhibit C-0064.

[39] Exhibit C-0065.

[40] Exhibit C-0056.

> **"23. Handling of complaints by Detectives in the C.I.D. on the night shift in 1975 was as follows. If we got a complaint, we typed up a citizen complaint form. We typed up the complaint ourselves. If a complaint about a person being assaulted, came from the Janeway, for example, and Detective Pitcher and I responded by going to the Janeway, he was most likely the person to type up the citizen complaint form. Unless we knew that the matter we were doing on a shift had been the subject of an earlier complaint to another member of the C.I.D., we did up the citizen complaint form. The person taking the lead in the response to the complaint would type up the citizen complaint form. On the night shift at C.I.D. we also wrote up a report called the "Night Duty Report" of all complaints we responded to and all other work we did on the shift, and left it for the Inspector in charge of the C.I.D. when he came in the next morning. The citizen complaint forms filled in during the night shift of the C.I.D. up to midnight would be taken down to the police station at Water Street by one of the uniformed service members, such as from the Street Patrol Division, at midnight which was when they changed shift. Their shifts were 8 a.m. to 4 p.m., 4 p.m. to 12 midnight and 12 midnight to**

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[41] Exhibit C-0239.

> **8 a.m.. When they were taken down to the police station on Water Street, the complaint forms would be recorded in summary on the occurrence sheets that were done up at that location. The occurrence sheets covered complaints handled by all Divisions, including the C.I.D., both night and day. Any complaints we received on the night shift in the C.I.D. from midnight to 2 a.m. were typed up by us in the usual way on the citizen complaint forms and we dropped the complaints down to the police station to be put on the occurrence sheets. Occasionally, information on complaint forms we typed after midnight was phoned down to the police station to make sure it got on the occurrence sheets and we dropped off the complaint forms the next day."**

The Constabulary Investigation: December 1975

On Tuesday, December 9, Detective (later Inspector, now retired) Robert Hillier of the said assault section was detailed to conduct the investigation of the complaint of Mrs. Carol Earle. Here some preliminary observations should be made. The assault section was headed by Detective Sergeant Arthur Pike under whom, in order of seniority, were Detectives Robert Hillier, Ralph Pitcher and Allan Thistle, the last named having joined the section only on December 1, 1975. At the time Detective Sergeant Pike was engaged in a prolonged arson investigation and that of the fishing gear replacement irregularity which, generally speaking, preempted his time and energies throughout the period of what may be called the first Mount Cashel investigation by the police; Hillier therefore, though not in charge, was the senior officer in the section with ten years service. He was accustomed to work in criminal matters with Detective Pitcher, as he said, "throughout his career", and in this case saw to it that the latter would be working with him. As was made perfectly clear by Pitcher it was Hillier's investigation and in due course this officer prepared two reports, the two reports in fact referred to in the commission's terms of reference, dated December 18, 1975 and March 3, 1976. In point of fact the first version of his report, as will be seen, was considered by his superiors as unacceptable, was returned to Hillier and destroyed by him. The report of December 18 was accompanied by statements arising from interviews with twenty-six boys and three adults under circumstances which will be examined.

It must also be noted that Hillier did not give his evidence to the commission until November 21, 1989 after all those former residents of Mount Cashel who had been interviewed by him and Pitcher, and who responded to the commission's invitation to testify, had identified before the commission the statements that had been given to the two officers in December 1975. The decision thus to proceed was a reversal of that proposed in the opening addresses of Mr. Day and Mr. Powell and was taken in order to delay these statements becoming public property until they could be released in edited form as adjuncts to Hillier's reports. This provoked vigorous objections in public session on October 17, 1989 by Mr. Jack Lavers, counsel for Douglas Kenny and Mr. M. Francis O'Dea, Q.C., for the Congregation of Christian Brothers as an unjustifiable change of front from the original position stated by commission counsel. Mr. Lavers urged that Mr. Hillier be called forthwith, the reports with attached statements entered in evidence, and that subsequent witnesses to whom the statements were attributed should be confined to giving evidence strictly arising from their contents. As will be seen from the transcript of my ruling on the various points raised which may be found at appendix B, the argument was wide-ranging, particularly on the part of Mr. O'Dea who made an eloquent protest, not only against the change of position by commission counsel, but also the whole process of the commission's inquiry which he said was contrary to the rule of law. I quote one short passage from my reasons for ruling in favour of the position taken by Messrs. Day and Powell, who both addressed the question at length:

> **"What we are to proceed with is the evidence of witnesses who made complaints. I am convinced that for their protection it should be given on the basis that commission counsel have outlined, and that the evidence of Mr. Hillier and the production of his report should be postponed to hearing this evidence in the course of which I understand that the individual statements will be presented to the complainants and they will be asked to remember in fact. Here I have already spoken about the tricks of memory, and particularly as to events that take place in the childhood of people who have now reached the prime of life. I do not know whether I will be offered any evidence from professional witnesses as to what those tricks may be, but I think our common experience suggests that memory is sometimes fallible, and I would say almost notoriously misleading in the case of recollection of adults as to what transpired in their infancy. If as I think, I must from time to time make findings of fact which are of relevance to the terms of reference of the inquiry, I hope it will be agreed that the recollections of these witnesses must be very closely examined as to what statements were given and as to any other relevant evidence."**

Chapter III

To return then to the narrative of what transpired in December 1975 in connection with the Constabulary investigation, it would appear that Detectives Hillier and Pitcher visited Mount Cashel to discuss with the superintendent, Brother Douglas Kenny, how and where interviews with the boys and the Brothers should proceed. As to the boys, it was arranged that these should take place at police headquarters (Fort Townshend) and surprisingly enough the superintendent was permitted to arrange transportation from the orphanage to the place of interview. I say surprisingly because the evidence is that he personally drove the boys selected to Fort Townshend, and made suggestions as to what they should not say with, as some testified, limiting effect upon what they were prepared to vouchsafe to the police. But Hillier said he was reluctant to employ police cars to convey the boys to and from the station.

It should be noted here that Robert Hillier, who testified at considerable length before the commission, had no recollection of making any remarks about complaints coming in about Mount Cashel and emphatically denied that he had said "I'll get them this time" as Mrs. Crewe testified, dealing with a visit by Hillier and Detective Allan Thistle (now Deputy Chief of Police) to Harvey Road on the following day (December 9, 1975). No doubt a remark of this nature would not be considered entirely appropriate by the sort of dedicated police officer that Mr. Hillier certainly was, but there is no possible reason, short of unlikely malice, why Mrs. Crewe should attribute a remark to him cut out of entirely whole cloth; it is probable that something of the kind was said in her hearing. In any event in her case record for December 9 she made the following entry:[42]

> **"Dec.9, 1975**
>
> **Office visit from C.I.D. officers Thistle and Hillier. more questions about yesterday's happenings. Mr. Hillier said complaints about Mt. Cashel had been coming in steadily for the last two years, and he would not be surprised to see the lid blown off this time.**
> **I advised him to contact Mr. Riche as to me he had seemed like a man with a vengeance. Mr. Hillier said they would and they would also investigate., Mt. Cashel. He also said I'd be hearing from them.**
> **After this visit case was handed over th *(sic)* Mrs. G. Stapleton, worker for Mrs. Earle's district. (AW)"**

Hillier's programme of investigation may be said to have begun on Tuesday, December 9, when he and Detective Thistle interviewed Mrs. Walters at Harvey Road and Shane Earle at his mother's residence on Duckworth Street. They took no statement from Shane Earle at this time because, as Hillier testified, he was in a highly emotional state, but no doubt obtained names upon which the selection of witnesses could be initially based.

There were no interviews on December 11 and according to Hillier it was on that day that he began to hear directly from either the chief of police, John Lawlor or the assistant chief of police (as the second-in-command was then called) John Norman. This exception to the customary adherence to communications through the chain of command evidently continued while he was engaged in his investigation, effectively bypassing the head of the C.I.D., Detective Inspector Yetman. My impression of the evidence is that Hillier dealt directly with Norman more often than with the chief but everything that Norman conveyed by way of instruction or explanation was attributed to the chief himself, probably in the hallway between the detectives' office and those of Lawlor and Norman which Hillier was apparently never expected or invited to frequent. He was told there was a "dialogue" in process between the Constabulary and the Department of Justice as to how the Mount Cashel matter was to be handled, that the minister was away from St. John's, and that the deputy minister was hesitating. If this had not been so, said Hillier, the interviews would have proceeded on December 11 and did proceed the following day when eight boys from Mount Cashel, delivered by Brother Kenny, were interviewed between 10:00 a.m. and 2:40 p.m. by Hillier and his partner, either jointly or severally. Five more boys told their story on Saturday, December 13; seven on Sunday, December 14 and three on Monday, December 15. Hillier said at the end of each day he gave at least some of the statements taken to either Lawlor or Norman.

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[42] Exhibit C-0056.

There were no interviews on December 16, apparently because of some delay in arranging for the production of Brothers English and Ralph for the questioning upon which Hillier was insisting. He was of the view that they were on the point of leaving the province, and was not aware, as he had certainly not been advised, that arrangements for their being interviewed by the police under circumstances quite different from those imposed upon the boys had already been made in an unexpected quarter. Brother Gordon Raphael Bellows gave sworn evidence to the commission on January 29, 1990. At the time of Detective Hillier's investigation

Brother Bellows was director of education for the Canadian province and lived at its headquarters at Mono Mills in Ontario. He testified to his belief that he was in St. John's between December 7 and 9, 1975 and had a limited recollection of what had transpired while he was there, except that while staying at Brother Rice monastery he had received a telephone call from Brother Dermod Nash on behalf of Brother McHugh, the provincial superior, or perhaps from Brother McHugh direct, informing him that there were allegations of sexual abuse of boys at Mount Cashel made against two Christian Brothers. He was asked to interview one of them at the monastery, and if he is correct in his statement that this man taught at St. Pius X School, one must assume that it was Brother English. Brother Nash, also resident at Brother Rice Monastery at the time was asked to do the same, and, on the same assumption, must have interviewed Brother Ralph. Both Bellows and Nash, highly respected and influential Christian Brothers were told that the allegations were, in the main, true. Then and only then were the detectives permitted to proceed with the questioning of English and Ralph, not as one might expect, in the same circumstances and at the same location, with the bustle and coming and going of regular police business such as had animated Fort Townshend when the boys made their statements, but in the seclusion of church premises known as MacAulay Hall. Instructions to do this clearly came to Detective Hillier from the office of the chief of police. As to whether he negotiated with the congregation himself or received instructions from someone in the department of justice to produce this result is unknown; the evidence of Lawlor as to the whole episode is negative, and expressive of his present-day belief that he did not know or could not recall what was happening, having left the whole matter in the hands of Norman, since deceased. He would not deny having received a visit from the provincial superior at this time; indeed he knew Brother McHugh and many other Christian Brothers as friends and "Patricians".[43]

But Brother McHugh, since elevated to the position of Superior General of the Congregation of Christian Brothers, came from Rome and testified to the commission on December 14, 1989. He of course had been advised about Mount Cashel, was profoundly shocked and came forthwith to St. John's, also taking up residence in Brother Rice monastery. He was forthright in saying that he had paid a visit to the chief of police, promising the co-operation of his order. It was a short meeting and McHugh had no recollection of making any arrangement as to when boys - and presumably Christian Brothers - would be interviewed, and he was not aware of any of the latter having seen Lawlor other than himself, although he did not exclude the possibility of Brother Nash having done so.

Brother Nash, whose health did not permit him to testify at a public hearing of the commission, but who gave sworn evidence to Mr. Day and counsel for a number of participants in the West Indian island of Antigua on May 12, 1990,[44] confirmed the fact that he had had a brief meeting with the chief to discuss the manner in which the Mount Cashel boys should be interviewed, making no specific reference to arrangements made at the time for police access to the suspects. At all events Brothers Ralph and English were interviewed at MacAulay Hall on December 16. Brother

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[43] Alumni of St. Patrick's High School in St. John's.

[44] Exhibits C-0495 and C-0495A.

Ralph signed a statement written out by Hillier: Brother English declined to do so, but made a verbal statement. Both amounted to admissions of guilt although heavily qualified in the case of Brother Ralph's. Although Brother English was more forthcoming, Hillier's recollection of what was said was impaired by the destruction of his notebooks when he later became a commissioned officer, a practice which appears to have been universal in the force at the time. Hillier and Pitcher both recalled that the Brothers were equipped with luggage as if about to leave Newfoundland, but it seems to be common ground that Brother McHugh had given instructions that they should be moved from Mount Cashel, one to Corner Brook and one to Grand Falls, and that they were either then on their way to these destinations or had just returned for the purposes of the interviews. What is also uncontested is that Ralph and English had already been questioned by Brothers Nash and Bellows, and Hillier had been instructed not to arrest them.

The Hillier Report: December 18, 1975

Then to his astonishment, and in the middle of what he regarded as an incomplete investigation, Hillier was ordered to produce his report forthwith and did so on December 18, sending it, as he thought, to Inspector Yetman, perhaps by the hand of Sergeant Pike. To his dismay the assistant chief returned it to him with a request that he rewrite it, and delete all reference to sexual abuse. Hillier demurred, and Norman thereupon said he had no choice other than to make it an order by direction of the chief of police. Hillier returned to his office much upset. Confronted with what he considered to be a lawful order and the sanctions of the regulations made under the *Constabulary Act*, R.S.N. 1970, s.28 (1)(5)(a), he was determined to leave as much as possible of the allegations of sexual abuse in the new version. No doubt the fact that Norman visited his office, put his hands on the younger man's shoulders and said: "Bob I am putting you in an awkward position but I have no choice" tipped the scale and he prepared the fresh report still dated December 18,[45] an edited copy of which may be found at appendix C. Hillier's impression was that Norman was sympathetic to the idea of leaving in as much as possible. Four copies were made of the report, the original for the department; one for the chief; one for the records department and one for its author, who subsequently destroyed it.

Digression is necessary to interpose a comment on the form of the report and of the statements attached to it. The edited version at appendix C with the names and ages of the twenty-four boys at Mount Cashel from whom statements were taken shows nine names deleted except for the initial letter of the surname. The deleted names are those of boys interviewed who did not subsequently wish to testify. The legible names are of those who complained to the police and testified on oath to the commission[46].

In addition, there is a statement signed by Carol Earle (Summers) and one by Brother Allan Ralph. According to the practice of the day the statements were written out in the thoroughly legible handwriting of either Hillier or Pitcher and the person interviewed was invited to sign. This was, according to both officers the police practice of the time, the typed copies being appended later. Also in accordance with the accepted practice boys under the age of ten years were not asked to sign. Several boys who later gave evidence mentioned what they perceived as recording devices in the interview room. Police witnesses were unanimous that none were used. Johnny Williams said he initialled each page of his statement, but in fact no such initialling appears; his statement is contained on one page and his signature appears at its foot.

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[45] Exhibit C-0137.

[46] To these must be added the names of Craig English, aged 8 who testified subsequent to the entering of the report in evidence and Roy O'Brien, aged 12 who gave a deposition. Edward Strickland did not testify although his half brothers Malcolm and Frank Baird did. These boys were interviewed by Hillier and Pitcher in their mother's house in Mount Pearl and as stated, written statements were not signed.

The Provincial and the Deputy

In the meantime Brother McHugh, after consultation with Brothers Nash and Bellows, both members of his provincial council, visited Mount Cashel to find out what he could about the truth or otherwise of the allegations of sexual impropriety. From his evidence it would appear that he was received in silence. Nor was the superintendent Brother Douglas Kenny, any more forthcoming in private consultation. Brother McHugh said that then and subsequently he learned nothing about the allegations from the Mount Cashel community. Altogether he spent, as he said, at least ten days in St. John's. At some point which the evidence indicates must have been after December 18 he received a telephone call from a woman he believed was the secretary of Vincent P. McCarthy, to arrange an appointment at the seat of government.

Chapter III

Vincent Patrick McCarthy was born on Red Island in Placentia Bay on September 6, 1919 and at the age of twenty served briefly as a constable in the Newfoundland Constabulary. His service was interrupted by his resignation to join the Royal Artillery as a member of Newfoundland's first contingent proceeding overseas in the Second World War and serving as such until its conclusion. He returned to Canada to complete the remaining year of his secondary school education at St. Bonaventure's College in St. John's, after which he entered Dalhousie University in Halifax proceeding to the degree of Bachelor of Arts in 1949 and Bachelor of Laws in 1952, then being admitted to the bar of Nova Scotia, and the following year to that of Newfoundland at the age of thirty-two. From then to the end of his life at the age of sixty-seven, Vincent McCarthy served his native province, first as a legal officer of the department of justice where after twenty five years he reached the summit as deputy minister and remained there until February 11, 1977. On that day he was appointed a judge of the District Court of Newfoundland in the Judicial District of St. John's West. He died on June 24, 1986.

The Provincial Superior made no difficulty about responding to this summons and in due course, accompanied by Brother Nash, paid a morning visit to McCarthy's office at the Confederation Building. Although the commission has the evidence of Brother McHugh given at a public hearing, and that of Brother Nash by deposition, the air of mystery which still surrounds the meeting which ensued could only have been dispelled by that of the lamented judge. According to the two eminent Christian Brothers they were graciously received and the deputy minister soon got down to business. There was, so they said, no negotiation and they were told that Brothers

Ralph and English must leave Newfoundland; they responded by assuring McCarthy that treatment of the Brothers' aberrations would be forthcoming. Brother McHugh had the "clear impression" that the removal of Ralph and English would not close the case, but that charges might be laid in the future. At the meeting Mr. McCarthy had a file on his desk to which he gestured occasionally but did not offer for inspection by his visitors. Brother McHugh refrained from asking to see it, although he suspected it was a report from the police. He testified that he was under the impression that what had transpired was the usual procedure, and acquiesced in the deputy minister's direction. That evening he left for Grand Falls and three days later returned to Ontario.

The Evidence of Pearl Bursey

Commission counsel and investigators assembled evidence, either at public hearings or by deposition, from every occupant of the offices of the department of justice beginning with the deputy minister's secretary, and it was this evidence which contributed more than anything to the air of mystery which I have alluded to. Brothers McHugh and Nash came and went unseen by the occupants of the department's fifth floor offices. Elaine Peet, Mr. McCarthy's secretary at the time had no recollection of making an appointment for the Christian Brothers to see him and had no record of their appearance in the office. Other than what the commission derived from the evidence of Brothers McHugh and Nash only a single ray of light appeared to penetrate the cloak of silence or incomprehension enveloping the departmental personnel. Marion Pearl Bursey was formerly private secretary to three ministers, the Honourable T. A. Hickman, the Honourable Leslie R. Curtis, the Honourable John Mahoney and again Mr. Hickman. Now living in Mississauga, Ontario she read about this commission's inquiry in the newspapers and found her memory stirred as to one occasion which she thought might be significant. She had heard nothing about physical or sexual abuse of children at Mount Cashel, but she recalled one day, when the minister was absent from his office, a party of four, two policemen and two Brothers or priests, waiting to see Mr. McCarthy whose office was adjacent to Mr. Hickman's outside which her desk was placed. Mrs. Bursey said that she knew Lawlor and Norman; she was sure Lawlor was of the party and thought that the other police officer was Norman. She was shown photographs by Mr. Powell of Brothers McHugh and Nash and the chief of police himself in the book recording the Christian Brothers Centennial published under the name, *"The Brothers Are Coming!"*[47] and thought, without being sure, that the religious in the group were those two Brothers. She had no certainty as to date, but since the members of the party were wearing overcoats she was sure it was in the winter. The occasion was unusual - indeed it was unique in her experience. Although she had seen Lawlor and Norman from time to time as visitors to those offices, she had never seen or recorded any visitation by members of the clergy. When the party arrived and began talking among themselves, she automatically looked over at the office of the minister and noted that the door was open and the light out, as was always the case when he was absent.

This testimony, resulting from an interview of Mrs. Bursey by commission investigator G. Frederick Horne, was given on

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[47] Exhibit C-0135.

January 22, 1990. The following day John Lawlor appeared before the commission at his own request and Mr. Powell led evidence from him as to what Mrs. Bursey had testified to. He felt that it was a misunderstanding on her part, and that the meeting in fact was of a committee set up by McCarthy to consider the chief's successor, consisting of Magistrate Hugh O'Neill, Superintendent K. Fraser of the R.C.M. Police, the deputy minister and himself; this had occurred some time in January 1976. Norman had been one of the applicants for the position of chief of police; there had been no meeting attended by him with any Christian Brothers and he had not been, as he told Mr. Horan, in McCarthy's office during the five years of his tenure. He said further that Mrs. Bursey was mistaken about him and Norman being in uniform, since this was only worn at the opening of the House of Assembly and similar formal occasions. On re-examination by Mr. Powell he explained that he had really meant to say he had not been in McCarthy's office during the time of the Mount Cashel investigation.

Pearl Bursey spoke warmly of the efficiency and devotion to duty of Vincent McCarthy and the good relationship he had with the minister in contrast to that which prevailed between a former minister and his deputy. She described McCarthy as a "very private man" who suffered from a malignant affection of his eyes and nose for which he had surgery. She also testified to his friendly relationship with the late Eileen Maloney, the chief clerk and head of the registry in the department. In her opinion Mount Cashel had been a respected institution at the time, and she knew nothing about the allegations current in December 1975 and the resulting police investigation.

I have mentioned the unfortunate impression made upon me by the evidence given by Mr. John Lawlor on the first occasion of his appearance before the commission. It was confused, and he appeared to be taking refuge in a failing memory induced by surgical intervention to eliminate an aneurysm, a proposition of some novelty. The question of a successor was indeed under consideration in 1976 when both the chief and assistant chief retired. When Lawlor testified he was seventy-eight and due allowance must be made for failing memory and a not unnatural desire to dissociate himself from the Mount Cashel aspects of this commission's inquiry. I have heard both Pearl Bursey and John Lawlor giving their evidence on oath and I have had the unusual advantage, not until recently enjoyed by judges and commissioners of playing video tapes of what they said at the time of their testimony, and observing at leisure their demeanour when they said it. I am of the opinion that what Mrs. Bursey testified to was inherently probable and believed by her, and that Mr. Lawlor on several occasions and probably on this, was not a reliable witness. For example it seems highly unlikely that Mrs. Bursey could mistake Magistrate O'Neill and Superintendent Fraser for Brother McHugh and Brother Nash. It is true that she was a native of the Burin Peninsula, as was Mr. Hickman, and that in 1979 when she remarried he was master of ceremonies at her wedding. This information was volunteered and she was not cross-examined on it.

The Evidence of Chief Justice Hickman

On March 29, 1990 Mr. Powell called the Honourable Thomas Alexander Hickman, Chief Justice of the Trial Division of the Supreme Court of Newfoundland, to testify before the commission. His evidence took the greater part of two days. He also had the greatest admiration for Vincent McCarthy who was his deputy minister until February 1977 when the latter was appointed to the bench. Mr. Hickman's first tour of duty as minister of justice was performed as a member of the ministry of the Honourable J.R. Smallwood, and his second as a member of that of the Honourable Frank Moores and, for a brief period, that of the Honourable Brian Peckford until his appointment as chief justice in December 1979. Several members of his staff testified to his "visibility" in contrast to the relative seclusion of McCarthy; they said he was a hard worker and unusually willing to let them use their own discretion and to back them up when the exercise of that discretion was called in question. Because of his unusual experience of the political life of the province since Confederation and his knowledge of so many personalities and situations, the Chief Justice's testimony was apt to be discursive, but he made two points which at this stage of the narrative can be isolated for immediate reference. First, he dwelt on the fact that from September 1975 to March 1976 the office of director of public prosecutions had been vacant following the resignation of John Connors, and the appointment of John Kelly. McCarthy was mostly concerned with civil matters, but in the absence of an incumbent he assumed the duties of the position himself; he was accordingly clothed with the mantle of prosecutorial discretion which as deputy minister he would never have assumed. Second, he as minister knew nothing of what was alleged to be happening at the orphanage or of a police investigation of these allegations, and their existence was never mentioned to him by anyone nor had he been subsequently made aware of them until 1979 under circumstances which will be examined. All the evidence and common experience point to the prevalence of the practice of informing a minister in matters of this kind against the possibility of being taken by surprise in the House of Assembly, and the failure to do so in the case of a potential bombshell of the kind discerned by the police and the deputy head of the department must be considered extraordinary.

Mr. J.R. Chalker, Q.C., who had appeared at the beginning of the commission's proceedings as counsel for the Law Society of Newfoundland, made two successive applications for standing for the estate of Judge McCarthy. The first on September 11, 1989 was rejected for reasons which in my opinion were valid in law, a result concurred in by Mr. Powell. The time came when the position then taken was reversed with the unanimous approval of all parties including both commission counsel; thereafter Mr. Chalker was able to devote his learning and ability as a representative of Judge McCarthy's daughter and executrix Mrs. Mary Mandville in the defence of her father's reputation. On this particular point he found it difficult, if not impossible to believe that an experienced deputy minister would not have at least discussed the matter orally with his minister, if not advising him of it in writing. There is no evidence in writing of any such communication and I accept Chief Justice Hickman's assertion that there was no information given to him at all about the allegations, about the report of December 18, and about a subsequent report by Detective Hillier dated March 3, 1976 which must now be considered.

The Second Hillier Report: March 3, 1976

According to Robert Hillier, and in contrast to the silence prevailing in the department, the termination of his investigation on December 18, 1975 was the subject of copious conversation at least in the lower ranks of the C.I.D. Then, after the triumphant and unclouded conclusion of the celebrations of the Christian Brothers centennial in Newfoundland, Hillier was asked by Chief Lawlor to make another report, excluding details of sexual abuse, "at the request of the Minister of Justice". This second report, and indeed the third which he had produced, was addressed in due form to the chief as follows[48]:

> **"Sir:**
>
> **I respectfully report that as requested by the Minister of Justice I am forwarding this report on child abuse regarding assaults on a number of children by Christian Brothers at Mount Cashel Orphanage."**

In accordance with his determination to alert higher authority and in this case, as he believed, the minister himself, he headed the document:[49]

> **"Re: Further to my report dated December 18th 1975 concerning "Corrupting of Children" at Mount Cashel Orphanage, Torbay Road, St. John's, Newfoundland. (Refer Br. Sec. 168(1) C.C.C.)."**

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[48] Exhibit C-0138.

[49] Ibid.

This reference is to a little-used section of the Criminal Code then reading:

> **"(1) Every one who, in the home of a child, participates in adultery or sexual immorality or indulges in habitual drunkenness or any other form of vice, and thereby endangers the morals of the child or renders the home an unfit place for the child to be in, is guilty of an indictable offence and is liable to imprisonment for two years.**
>
> **(2) No proceedings for an offence under this section shall be commenced more than one year after the time when the offence was committed.**
>
> **(3) For the purposes of this section, "child" means a person who is or appears to be under the age of eighteen years.**
>
> **(4) No proceedings shall be commenced under subsection (1) without the consent of the Attorney General, unless they are instituted by or at the instance of a recognized society for the protection of children or by an officer of a juvenile court. 1953-54, c.51, s.157."**

The report which may be found at appendix D[50], contains two statements signed by Brenda Lundrigan and dated January 11, 1976. The first recounted the episode already referred to of the visit she made with Johnny Williams and Dereck O'Brien to Harvey Road in September of the previous year, as well as an incident involving Jerome Williams. In this she expressed her belief that the boys were being badly treated at Mount Cashel and that her mother, Veronica Tobin, had as a representative of the Anti-Poverty league - not the Human Rights Association as Detective Hillier believed - made recordings of what certain boys had told her and a male associate. The second statement was a general reference to "homosexual acts" of which she had heard and a specific reference to a story told to her by Johnny Williams. Both statements were signed and witnessed by Detectives Hillier and Thistle and Hillier gave an explanation of how they happened to be taken on January 11 when the Mount Cashel investigation had officially concluded, saying that he might have left messages for Brenda at her parents' home on St. Clare Avenue in the previous month, or perhaps that he was proceeding on his own and unauthorized. In any event Brenda's second statement, as may be observed, concludes with the sentence:[51]

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[50] Exhibit C-0138.

> **"The boys are in a position whereby there is very little they can do about what's happening but a lot of people know about it now and something should be done to help them."**

Here indeed was a notable appeal.

Other annexures to the report of March 3, 1976 were Dr. Patey's memorandum and the polaroid photographs of Shane Earle's buttocks which were taken at Carol Earle's house in December. Hillier's reference to Andre Walsh, his hands cracked and peeling from a strapping of clearly excessive severity, and the tears with which he displayed them to the detective, have stayed in his memory to this day, although, as he said, all the boys were either nervous or crying at one time or another as they made their complaints to him. It may reasonably be asked why no statement was taken from Chesley Riche; according to Hillier he approached him in the course of the December inquiries and had an unsatisfactory conversation in the street at which time Riche seems to have declined to give information and to have stated that it was up to the police to find out the facts. This was quite consistent with Riche's stated dislike of the Constabulary at this time, and which moved him to call on an R.C.M. Police officer for help in the case of Shane Earle. Riche testified that he had told Simms, on December 8, about an occasion when he observed Brother Kenny with a twelve-year-old boy on his knee, and subsequently found the superintendent banging either this or another boy's head against the walls of his office.

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[51] Ibid.

This report is distinguished by an apparent anomaly in that it bears the initials "AP/cp" in the margin of the first page. The capitalized initials are those of Detective-Sergeant Arthur Pike and those in lower case are of Carol Power, secretary to the chief of police. It is clear from the evidence of Hillier, Pike and Carol Power that it was typed by her, presumably at the request of Pike, and that this practice was not unusual in the case of reports on sensitive matters. Hillier thought that he saw the report being taken by the police courier out of Fort Townshend and was confident that it was destined for Mr. Hickman. When asked why, he said that the chief of police had told him so. It is perhaps unnecessary to say that Chief Justice Hickman denied on oath ever having received this report or its predecessor, and I find this to be a fact.

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No Charges

It may be permissible here to pause and consider the information, albeit in the form of allegations taken seriously by members of the Constabulary and the department of social services, at this point in the hands of the deputy minister of justice acting as director of public prosecutions. The report of December 18, 1975 contained allegations by young children and adolescents, wards of the state and under the guardianship of the director, that they had been in varying degrees ill-treated by at least five and perhaps six of the ten Irish Christian Brothers appointed to supervise their living conditions and physical and moral development. Those implicated were Brothers Kenny, Ralph, English, Burke and Short and the misconduct alleged ranged from excessive corporal punishment, obscene language and assault and battery to inappropriate kissing, feeling of the private parts of the boys and inducing similar feeling in return, and to forced fellatio and forced masturbation. The second report was clearly an extension of the first to which its author explicitly referred, and if it was genuinely intended by Lawlor and Norman for the eye of the minister its perusal would have compelled the production to him of the first report. Neither report was signed in the space provided for "J.F. Lawlor, Esq., J.P." although both were signed by "C. Yetman, Detective Inspector I/C Criminal Investigation Division".

Both Robert Hillier and Ralph Pitcher testified that they felt charges could and should have been laid, and yet it is uncontested that fifteen years ago, and even more recently, the accepted practice was to submit reports to the department of justice in all but routine proceedings for direction as to whether charges should be brought. Correspondingly all the evidence from officers of the department at that time who testified to the commission was that "prosecutorial discretion" was exercised at the point of decision as to laying of charges and was generally exercised against doing so in cases which did not seem likely to be won. The reaction against this procedure has been recent and sharp, and will be considered at a later stage of this report. Section 244 of the Criminal Code with respect to assaults of the type complained of, and sections 156 and 157 for sexual improprieties, were in place in 1975 and 1976. If the investigation had been carried to its normal conclusion with police interviews of all the boys at Mount Cashel and of all the Brothers involved with their care, something like the one hundred charges now laid as a result of the reopening of the investigation on February 15, 1989 might have been contemplated, the current charges being of course laid under the sections of the Criminal Code then in force. There would have been difficulties because of the age of some of the complainants and the necessity of corroboration. In the event no charges based only on Hillier's two reports and the complaints assembled there were ever laid. But the narrative must be pursued if only to seek to explain why this momentous decision was made.

The Confederation Building Meeting

When Brother McHugh returned in January 1976 for the purpose of attending the centennial celebrations of the arrival of the first Christian Brothers from Ireland he was greatly concerned about the future of Mount Cashel. In a letter to the Reverend Brother D.F. Nash dated January 10, 1976 whom he addressed as "Dear Felim" - perhaps a nickname since Brother Nash gave his name to Mr. Day in the Antigua deposition as "Dermod Pearse" - referring to the establishment of the Mount Cashel advisory board established by the provincial council of the order which asked that Brother Nash be chairman and Brothers A.F. Brennan and J.I. Gale be members, he proceeds to set out "some of the suggestions and terms of reference which arose during the council's discussion":[52]

> **"1) You will write the Deputy Minister of the Department of Social Services asking him to appoint a member of his staff to the Board,**
>
> **2) The Advisory Board may suggest increased membership.**
>
> **3) The Board is not a decision-making body.**
>
> **4) A copy of the minutes of all meetings should be forwarded to the Provincialate.**
>
> **5) The Board is instituted in order to assist the superintendent of Mt. Cashel in formulating and applying policy in the areas of discipline, admission, departure, etc.**
>
> **6) All terms of reference for the Board should receive the approval of the Provincial Council."**

Although there was already in place a liaison committee sponsored by social services to assist Mount Cashel, which had for some years been advocating the full-time attachment of a social worker to the orphanage, McHugh said he had had difficulty with the idea of a government-appointed social worker in this role. As to this he may have been influenced by Brother Kenny, and the advisory board had a brief existence, its functions being shortly taken over by the provincial council which was indeed a decision-making body. In any event the provincial superior sought a meeting with appropriate officers of the department, and on an unspecified date in January this was convened in the deputy minister's boardroom and was initially attended by H. Vernon Hollett, George Pope, Gabriel McHugh, and Dermod Nash. A particular invitation to attend was issued to Frank J. Simms and his assistant director Sheila Devine which was accepted. In his evidence before the commission Brother McHugh said that he wanted to know where the congregation stood with the department concerning the incidents of December 1975 about which all present were informed. He referred to the work of renovation at Mount Cashel, to be accompanied by a change of direction, in routine, in accommodation, supervision of the boys, and the establishment of the advisory board. According to Sheila Devine, whose attendance Brother McHugh did not recall, he assured the meeting that no charges had been laid against the two Brothers involved. McHugh himself testified that he "had an impression" that there was a statement about Ralph and English being removed from Newfoundland. This *démarche* was met by expressions of confidence in the work of the Christian Brothers by the departmental representatives, a reminder of the fiduciary obligations of the director and Mrs. Devine's request for the names of the boys affected, a request which Brother McHugh did not recall, and which evidently was ignored or forgotten by everybody else. It must be said in fairness to him and Brother Bellows that both of them in their testimony deplored the lack of concern for the alleged victims on the part of their order at this time, and until comparatively recently, and it must also be said that significant efforts and expenditures have been made by the Christian Brothers since this commission was constituted for the provision of counselling and other assistance for victims of sexual abuse at their hands, and at the hands of others.

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[52] Exhibit C-0260, p.100.

Brother Nash Reports to the Provincial Superior

Brother Nash said that he was profoundly relieved by the atmosphere prevailing and the expressions of confidence at this meeting. But he was to have another encounter with Mr. McCarthy. Evidently as a result of the police report of March 3, 1976 the deputy minister had expressed additional misgivings, the nature of which were revealed by a memorandum sent to Brother McHugh by Nash dated March 18, 1976 and here reproduced:[53]

> **"18 March 1976**
>
> **TO:** **Br. G.G. McHugh**
>
> **FROM:** **Br. D.F. Nash**
>
> **SUBJECT:** **Reminders re Mt. Cashel**
>
> **At the most recent meeting with the Deputy Minister of Justice, Mr. McCarthy, the following points were raised. I have already communicated such to you by phone and am including such again as reminders re situation at Mt. Cashel:**

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[53] Exhibit C-0221.

> **1...Brs. Ted English and Gerry Ralph are not to return to the Province of Newfoundland.**
>
> **2...Brs. Kenny and Short are not to be assigned to Mt. Cashel.**
>
> **3...Br. Burke's continuance at Mt. Cashel is questionable re record of punishmentincidents.** ***(sic)***
>
> **4...There seems to be a need (strongly expressed) that the Congregation make public in some form the fact that the Mt. Cashel scene is very definitely under change and review. This will serve to assure all (friends and otherwise) that the "situation" at Mt. Cashel is definitely at an end and that definite action has been taken."**

The date of this "most recent meeting" is not apparent, if Nash communicated the substance of his letter by telephone it must have been on or before March 18. Obviously the involvement of Brothers Kenny, Short and Burke had become clearer to readers of the two Hillier reports together, so that it may have taken place subsequent to the receipt of the March 3 report. However that may be, it is astonishing that the provincial superior addressed from St. Joseph's Provincialate at Mono Mills a warm letter to Brother Kenny then in Rome, dated April 10, 1976[54] saying *inter alia*:

> **"The final report on the "Mount Cashel affair" is completed. You will be happy to know that no accusations have been levelled against you whatsoever. As you recall our discussing so many times, your only**

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[54] Exhibit C-0222.

> **implication was not moving on the situation soon enough. That was an error of judgement which any of us could have and may have made. I pray that you will have peace of mind now over the whole matter. Many thanks for your support and cooperation during that difficult time and indeed throughout your term of office in Mount Cashel. You have much to be proud of and thankful for.**
>
> **Dip, your assignment for next year will be Vancouver College. It is our hope that you will be able to assist with the boarders. We also need a strong replacement for Paul Nolan who has been appointed superior of St. Mike's, Grand Falls. So, in both cases you fit the bill perfectly. I feel sure, also, that for awhile you will not want too many reminders of the painful experience of December. Vancouver will take care of that too."**

Brother McHugh, however, testified that he had been told nothing about any misbehaviour on Kenny's part and assumed the suggested exclusion of Brother Kenny from Mount Cashel was a result of his handling of the "painful experience of December". The former superintendent was at this time enjoying what was known as a "tertianship", the exact nature of which is unexplained but was evidently some form of spiritual renewal undertaken in Rome.

That the silence which descended on the interrupted Hillier investigation was not complete can be judged from the evidence of Mr. John W. McGrath, at the time a prosecutor in the department of justice, and Mr. Albert John Noel, then a young draftsman and subsequently legislative counsel to the House of Assembly. McGrath remembers being told about the Mount Cashel investigation on the fifth floor, but could not recall the name of his informant. Noel's was none other than Miss Eileen Maloney, to all intents and purposes the office manager for the department and already referred to. Noel said that she was upset about the suppression of the investigation, and he as a young lawyer was appalled at the apparent interference.

Disclosure Forestalled

A curious incident almost precipitated full disclosure. Carol Baird, formerly of Mount Pearl and mother of the three Baird boys whom she had withdrawn from Mount Cashel, shortly after the visit from Detectives Hillier and Pitcher was forced to vacate her house in Mount Pearl by a fire. Social Services thereupon transported her and five children to the Welcome Hotel where she spent some seven weeks in highly adverse circumstances. Reading a newspaper story about the department's lavishness in putting a family up in a hotel suite she telephoned the Evening Telegram "to put them straight". A newsman called Kelly, with a female assistant, came to observe the suite which Carol Baird said was "a hole".

William Patrick Kelly was employed by the Evening Telegram from 1969 to 1977 and was at this time, evidently in late January, the news editor. He received Carol Baird's telephone call and testified about it to the commission on November 30, 1989 together with Robert Joseph Wakeham, at the material time a reporter under Kelly. Kelly said that he would not ordinarily get involved in such a situation but the woman had made a personal call to him. During his conversation with her she mentioned the Mount Cashel orphanage and referred to the boys being physically abused and that they had been "touched". Two of the Brothers had been involved and would be sent out of the province. Kelly's evidence differed from Mrs. Baird's only in that he placed the event before Christmas 1975. He proceeded on the same day to call the police, who would not comment but referred him to the department of justice where he spoke to John Kelly to whom he had frequently directed inquiries and who told his namesake that there were no grounds for criminal charges against the Brothers, the conduct having been inappropriate but not criminal. The news editor thereupon assigned the story to Wakeham, and the two of them went to Mount Cashel to see the acting superintendent, Brother Moore.

The journalists were courteously received by Brother Moore who offered to show them around Mount Cashel, but would not supply any details of what they were really interested in. Kelly then called the Provincial Superior at Mono Mills and found that he was on that day in Newfoundland, where he was eventually located by telephone. Brother McHugh urged Kelly not to use the story without consulting his editor, but, if he had to, he offered to supply some information, the difficulty being caused by two "misfits" who had engaged in excessive punishment together with some minor problems including the fondling of some boys. Their activities had been quickly spotted and dealt with and treatment would ensue. Kelly asked Wakeham to write the story and then went to talk to Stephen Herder, publisher of the Evening Telegram. He told him that he thought the story should be used, but Mr. Herder disagreed and took Brother McHugh's position. He had no wish to damage an institution with a record of a hundred years of good works. He was confirmed in his view by what William Kelly told him about the information given by John Kelly in the department, as was William Kelly himself who thought that Herder's position was justifiable under the circumstances. The story was "killed". But on reflection William Kelly felt that he and the Telegram had been victimized by Brother McHugh and John Kelly, and resented being referred to as part of a "cover-up" as indeed he might.

A more determined stance was taken by Vincent McCarthy when, in accordance with the anxieties of Sheila Devine, she and Frank Simms attempted to see the police report of an investigation which they had been partly instrumental in provoking, and which appeared to be complete. At that time it was a matter of routine for social workers who had a valid interest to review police reports, and perhaps to obtain copies. Routine inquiries in this case were unanswered and finally Mrs. Mary Noonan, of the civil side of the department with special responsibility for child welfare cases such as wardships, and described as "my solicitor" by Simms, was asked for her personal intervention to obtain copies of the reports. Mrs. Noonan, after making inquiries of the police, approached Vincent McCarthy and put her "client's" request directly to him. She was astonished and dismayed to be told by the man who had held her articles, and whom she admired, that the matter had been disposed of and that "she did not need to see it".

This must be the place, at the risk of putting a strain upon chronology, to pursue the fate of Hillier's reports to what might well have been their final resting place had the interrupted police investigation of 1975 not been reopened by the Honourable Lynn Verge, Q.C. in February 1989 and this commission constituted. No charges had been laid against the Brothers Ralph and English or against any of their colleagues. In March 1976 John Geoffrey Kelly had relieved Vincent McCarthy of his unaccustomed duties and been appointed director of public prosecutions. Nevertheless the Hillier reports, which may have been seen by Eileen Maloney, were not processed as she would normally have required, and remained, as already noted, in McCarthy's office and in his personal filing cabinet. Spring, summer and autumn of 1976 came and went and in the depths of the winter of 1977 McCarthy's burdens and his discharge of them were alleviated and rewarded by his appointment to the District Court bench.

Sergeant Pike and John Kelly at the Soper Inquiry

On April 10, 1979 Detective Sergeant Arthur Pike gave evidence *in camera* to His Honour Judge Lloyd Soper (now the Honourable Mr. Justice Soper of the Supreme Court of Newfoundland) sitting as a commissioner to inquire into a fire at the office and apartment complex in St. John's known as Elizabeth Towers. I have no intention of examining the proceedings which he conducted in more than one connection, nor is it my proper function to dwell upon a series of events which terminated at least two political careers of promise in provincial politics and perhaps accelerated the retirement of two of the most influential officers of the department of justice. As for the witness Pike who had "leaked" to a St. John's newspaper information derived from one of his subordinates the substance of a report later given by him to the leader of the opposition in the House of Assembly, he was disciplined by demotion and his conduct condemned in measured terms by the commissioner. Judge Soper, who thought he had been leniently treated, had permitted him to testify as to examples of what he claimed had been "cover-ups" effected by the department during his experience as a police officer. These included investigations of the Fishing Gear Replacement programme and Calvert Fish Industries, which he finally agreed under questioning by counsel was not a "cover-up", and one by Detective Hillier of complaints by residents of Mount Cashel Orphanage. The transcript of evidence[55] contains this at pages 291-3 and 294-5:

> **"F. Woolridge, Q.C.:**
>
> **Any other incidents?**
>
> **The Witness:**
>
> **Yes. I think one which was conducted .... an investigation which was conducted by Detective Hillier, the date I can't be sure but I think it was either late 1975 or 1976, an Investigation which started out as an Assault charge, or Assault Complaint against a child who was a resident of Mount Cashel Orphanage. The investigation was completed by a Detective Hillier. I didn't have any involvement in this investigation but it lead to alleged sexual activities between Sexual Activities and Assault on the children by three brothers Christian Brothers in the Orphanage.**
>
> **Q. How did you get your information in this case? Was it first-hand?**
>
> **A. In this particular....yes ...I got the information first-hand from Detective Hillier who complained to me. I was tied up completely on the Fisheries Investigation at the time and Hillier complained to me that the Chief of Police at the time had asked him to change the report to make two reports out of the one, to separate the Assaults from the Sexual Activities. And he**

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[55] Exhibit C-0142.

didn't feel that he should do this because it was all contained in the one, it all resulted from the one complaint and it was sort of combined thing. I in turn spoke to the Assistant Chief at the time and he told me that this request had come from the Deputy Minister. Now this is not the present Deputy Minister, it is the former Deputy Minister, to have it changed. And I expressed my opinion to the Assistant Chief that it shouldn't be changed because of the nature of the whole investigation. And as far as I know the reports were not changed. The Chief of Police at that time was Chief Lawlor and the Assistant Chief of Police at the time was Assistant Chief Norman. The Deputy Minister at the time was Deputy Minister McCarthy. After this ... after I had talked to the Assistant Chief the next I heard about this was a call which I received from Mr. Kelly at the Justice Department requesting some information that was on the report. So I thought this was unusual and I said sure the report I said should be in your office concerning this matter and he said that he hadn't seen the report, that the Deputy Minister had the report and he couldn't get it. But he was requesting the names ... or he asked me to check .... he gave me two names of children and asked me to check to see if these two children were two of the children involved in the investigation because I think it was Mrs. Noonan he told me, another lawyer at the Department was ... had a custody case in family court and she was wondering if the custody case involving these children were the same children involved in the investigation.

A. In regards to this latter one I have since been told that these three brothers who were involved, three Christian Brothers who were involved were transferred outside of the Province. I think to some other areas.

Q. Was that as the result of some internal proceedings, possibly disciplinary nature within the Church?

A. I don't know.

Q. You have no idea?

A. I have no idea what happened to this investigation afterwards. To my knowledge there was nothing ever came back from the Department of Justice relating to this investigation.

Q. Were any charges laid?

A. Not to my knowledge.

Q. In other cases where charges may not have been laid, to your knowledge, was it customary for the Prosecutors or Mr. Kelly to give reasons for not laying the charges?

A. Yes we usually we get a reply by letter saying that if there is insufficient evidence, saying that there may be insufficient evidence, then charges won't proceed. In just about all cases we received letters saying that we should proceed with charges.

Q. Could that be the case Sergeant with respect to this last incident you've described?

A. No. I have no reason to believe that anything ever came back. Not to my level, in the department. However, shortly before this In *(sic)* Inquiry was appointed, Chief of Police Browne called me to his office one day and asked me what cases I was referring to when I mentioned during the preliminary hearing in the Farrell case when I said I was aware of other investigations that were conducted and no charges laid. He asked me which ones I was referring to and I brought up this one. And he said I remember something about that but I wasn't Chief at the time and he said these Brothers were sick and they were sent away for treatment or something. And I said we were never notified about it. Well he said I wasn't Chief then but from now on I will make sure that we get a reply from all investigations that are sent in.

Q. So in these ... in this case you didn't receive any written reason?

A. No.

Q. But might the written reason be that there was insufficient evidence? Or might the reason be there was insufficient evidence?

A. I can't remember what was on the report. That's possible. I do remember seeing a photograph of one of the Children that came with the complaint. I am pretty sure it was this complaint, showing the marks of the child. I was led to believe by Detective Hillier that some sort of action should have been taken in this matter. He was concerned about it.

> **Q. So he felt he had a good case?**
>
> **A. Yes.**
>
> **Q. But it is conceivable that whoever in Justice had control of the matter, might disagree with that?**
>
> **A. It is quite possible."**

Later in his evidence he was asked at page 297 and answered at page 298:

> **"Q. Did ... in these three episodes here you told us that you bought *(sic)* the matter up with Mr. Kelly on the first incident about a year ago and at that time he told you all fishermen will be charged. Did you make any complaint about the second incident involving the orphanage?**
>
> **A. No. I didn't make any complaint about that. Like I say, Mr. Kelly had nothing ... I have no reason to believe that Mr. Kelly even saw the report on the Mount Cashel investigation. Otherwise if he had seen the report he wouldn't have called me to get some information that was in the report."**

In his report which was the first of six volumes, five of which were confined to reproducing the transcript of evidence, the learned commissioner said that John Kelly as director of public prosecutions, who also testified in the *in camera* hearing, had "in each instance (been) able to give a creditable reason for not prosecuting". He expressed the view that the only possible criticism was the failure of the department to inform the police of its reasons. As to what was evidently acceptable in the case of sexual abuse of children Kelly may be heard as he spoke on that occasion:[56]

> **"Q. Now the second incident he tells us about occurs in late 1975 or '76 and he indicates that it started as a result of a complaint against a child, a resident of Mount Cashel Orphanage, are you familiar with that particular incident?**
>
> **A. I'm familiar with it but not directly involved in it.**
>
> **Q. Sergeant Pike tells us that he was not involved directly in the investigation and he gets his information from Detective Hillier who apparently was doing the investigation. There were alleged sexual activities and assaults on some of the boys at that institution, apparently by three Christian Brothers, and it is alleged that Detective Hillier complained to Sergeant Pike that nothing had been done about that and that the Chief at the time asked him to make two reports, to separate the assault from the alleged sexual activity and Sergeant Pike says he spoke to the Assistant Chief but that that was not done; in other words the report was not changed into two reports and at that time the Chief was Lawlor, the Assistant Chief was Norman, and the Deputy Minister of Justice was Mr. McCarthy, that he received a call from you requesting information on the report and you mentioned that the Deputy Minister had it and you couldn't get it and you were looking for the names of the children in order that another solicitor involved with the case had information**

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[56] Exhibit C-0264.

concerning another case and so on. Then he says that the three Christian Brothers were transferred outside the Province and that Chief Brown made some comment to the effect that they were sick and that was the reason why no charge was laid. He says he didn't complain about this and he suspects that you probably never did see the report that went into the Constabulary. Now that's a long recital of what we were told but I think that sums up what we were told and can you comment on this ... on these particular allegations?

A. I remember I was working in the Civil Division at the time. I can remember the Solicitor for Social Services who was Mary Noonan said to me ... asked me did I know about the Mount Cashel incident. And I said no. So I don't know how I found out. I can't remember making a telephone call to anybody. I can remember ... or I learned from somebody and I think it was a year or so later that the Deputy Attorney General at the time a Mr. McCarthy had agreed with the Chief of Police that no charges would be laid, that they had an undertaking from the Christian Brothers Association or whatever the body is called that they would be transferred back to the United States. I think one was silenced, it's a term they have. Another was put in hospital in the United States and that they would never again be in a position to have anything to do with young boys. Now I don't know whether they were transferred when the investigation started. But I can't remember ever having a phone call. I have never seen the report, other than knowing or hearing from one of the Detectives that no action was ever taken on that report but

> **again that is a prosecutorial discretion that ... and I never did question the then Deputy Attorney General about it. I took no more interest in it.**
>
> **Q. Yes there is no suggestion from his evidence that you had very much to do with it.**
>
> **A. No I ...**
>
> **Q. But I think the point he was making was that it happened at all and you are aware that something along the line ....**
>
> **A. Oh, oh undoubtedly it would not be unusual in the exercise of discretion in a case of that nature that .... yes charges would not be laid if physiatric steps were taken or if sometimes if the accused gets out of our jurisdiction. You know he is out of our hair. This is a decision that prosecutors make quite often.**
>
> **Q. And it is not unusual to be faced with a situation like this?**
>
> **A. No."**

To be fair to the witness he did not, on reflection, think that this was a considered opinion.

Before this commission Kelly had testified that he had no knowledge of the Hillier report of March 3, 1976 - coincidentally the day of his appointment as director - and of the first report only what he had learnt from Mary Noonan at the time of her frustrated attempt to satisfy the requirements of the child welfare division. But he said he "accepted" the transcript of evidence when it was put to him by Mr. Powell and that he could only explain his apparent knowledge in April 1979 by having had access to a "reading file" circulating among offices of the department for information as to current correspondence. He did not suggest what pieces of correspondence he could have seen.

Although Judge Soper did not submit his report to the Lieutenant Governor in Council till August 16, 1979 he decided to make the *in camera* evidence public and did so on March 16 of that year, expressing, according to an Evening Telegram report, "some apprehension about releasing this evidence".[57] In a long dispatch the Telegram reporter confined his observations to the following guarded language:

> **"The second case Pike brought up was one involving an investigation into alleged assault and sexual assault incidents on the part of three men against young boys. No charges were laid as a result of the investigation although, Pike reported, the investigator thought there was sufficient evidence."**

The Daily News listed the allegations as to concealment on the front page of its issue of May 17 and referred to what was unidentified in The Evening Telegram as:[58]

> **"The case of three Christian Brothers alleged to have sexually assaulted two children at Mt. Cashel Orphanage in 1975;"**

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[57] Exhibit C-0212.

[58] Exhibit C-0211.

The Letter to Rome

It is difficult to measure the impact of these disclosures over ten years ago of something that occurred four years before that and some observations on this point must be made below. Nevertheless it produced a striking communication from Brother Bellows the Provincial Superior to Brother McHugh the Superior General in Rome:[59]

> **"May 26, 1979**
>
> **Dear Gabe:**
>
> **I have the sad task of informing you that the Mt. Cashel incident of the fall of 1975 (involving three monks) became public last week in St. John's and was reported in the media. It happened this way:**
>
> **A Sergeant Pike of the St. John's police force -- who did the original investigation of the Mt. Cashel case -- was involved in the Dr. Tom Farrell episode concerning a fire in Elizabeth Towers. Before the Justice Department's report on the Farrell case was officially released, Pike slipped a copy of it to Bill Rowe, Leader of the Opposition, on the pretext that the Justice Departmentintended *(sic)* to bury the Farrell Report. After Rowe had given the details of the Report to the media, there was a hue and cry in the police department about the release of confidential documents and Pike was identified as the "leak". He was demoted consequently suffered a loss in salary. In retaliation, he indicated that he had acted to prevent**

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[59] Exhibit C-0224.

> "cover-ups" similar to ones that he alleged had taken place in the past. Because of this allegation, he was called before an "in camera" court session presided over by Judge Lloyd Soper. Later, Soper released Pike's testimony which identified three cases of "cover-up": including that of Mt. Cashel. In reference to Mt. Cashel, Pike revealed that "three American CB's had been involved in improper behavior, that their Superior had acted immediately and that one was sent to a psychiatric institution and the others sent back to the U.S." CBC-Radio repeatdthis *(sic)* item verbatim, the Telegram edited it circumspectly to render it harmless, but the Daily News quite clearly reported it unchanged.
>
> You can imagine the shock and embarrassment of the monks in Newfoundland at this unexpected revelation--since so many of them had absolutely no inkling whatsoever of the episode. Over a week has now passed since the news outbreak. At the moment all appears calm. However, last night Premier Peckford called a Provincial election for June 18. I'm worried that in the hurly-burly of politics the Liberal Party may play it "dirty" and the Mt. Cashel episode (together with other confidential Justice Department Reports) used to embarrass the Government, and still further embarrass our Congregation.
>
> I'm afraid we're in for a very difficult month of June.
>
> Please keep us in your prayers as we try to weather the shocking revelation. I'll keep you posted on any further happenings."

When Brother Bellows testified to the commission he admitted that his statement that so many of the "monks" not knowing anything about the "episode" was an assumption only.

*   *   *

The Mount Cashel File in Justice

Robert Hyslop, Q.C. (now Judge Hyslop of the Provincial Court) as senior Crown attorney in 1979 had conducted the preliminary hearing for the Crown on the charge of arson with which the Soper inquiry was concerned. Pike was a witness and at the time told Hyslop that he was aware of other investigations that had been shelved. This was in December 1978 and Hyslop did not see Pike again until 1986, saying that he had no confidence in him, and had given him a wide berth since he felt that he himself had been a suspect at the time of Pike's purloining and disclosure of the reports on the Elizabeth Towers fire. He was not involved as a witness before Judge Soper but he testified that he knew there was evidence being given *in camera* as to "cover-ups" and, because child abuse was Mrs. Noonan's speciality, he approached her and asked to see whatever was extant. He was positive that she opened the drawer in a filing cabinet in the main office of Justice at the Confederation Building and showed him a file[60] which was put in evidence during the uncommunicative testimony of Elaine Peet, who disclaimed any knowledge of its creation although she acknowledged her initials on one of its folios. When Madam Justice Noonan testified to the commission on February 20 and 21, 1990 she was greatly troubled by Judge Hyslop's testimony, vigorously insisting that she had never seen the file until Mr. Powell had shown it to her during a preliminary interview. She described Judge Hyslop as a valued colleague but asserted that she would never take a file out of the registry herself, and in reply to a question put by me she said that any knowledge of the file and its contents would have engaged her close attention in view of her abortive effort to obtain the police reports from Mr. McCarthy.

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[60] Exhibit C-0179.

This apparently flat contradiction in the sworn evidence of two highly-placed judicial officers would be troublesome if anything vital turned upon it. Judge Hyslop testified that he noted at the time the absence of police reports in a file labelled "Mount Cashel re Child Abuse". Since he was explicit in identifying the documents which he saw at the time when the file[61] was put to him by Mr. Powell, it is appropriate to set out here the correspondence contained in it. The top folio was a carbon copy of a letter dated January 26, 1977 marked "despatched" on the same day reading as follows:[62]

> **"McC/ep** **January 26, 1977**
>
> **PERSONAL AND CONFIDENTIAL**
>
> **Mr. John R. Browne,**
> **Chief of Police.**
>
> **I return herewith your reports dated September *(sic)***

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[61] Exhibit C-0179.

[62] Exhibit C-0179A.

18, 1975, and March 3, 1976, respecting child abuse at Mount Cashel.

I also enclose copies of letters received from Brother McHugh and Reverend Dr. Thomas A. Kane which are self-explanatory. In view of the action taken by the Christian Brothers further police action is unwarranted in this matter.

Vincent P. McCarthy,
Deputy Minister of Justice.

encls.

JAN 26 1977

DESPATCHED"

This carbon copy was on the yellow flimsy paper used in the days before the more expensive but perhaps more durable photostatic copies were generally in use. The second folio lying beneath this was an original letter written to McCarthy on the letter paper of the Congregation of Christian Brothers, St. Joseph's Provincialate at Mono Mills, superimposed upon which is the stamp of the department of the attorney general indicating that it was received on January 28, 1976 and dealt with on January 26, 1977. The line drawn by this stamp indicating receipt is initialled by Eileen Maloney, and that opposite "dealt with" by Vincent McCarthy. The text is as follows:[63]

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[63] Exhibit C-0179B.

"January 23, 1976

Mr. Vincent McCarthy, Q.C.
Department of Justice
Confederation Building
St. John's, Newfoundland

Dear Mr. McCarthy:

I wish to keep you informed of the community's action concerning Brothers Ralph and English.

Br. Ralph was interviewd *(sic)* by Drs. Hughes and Eveson of Emmanuel Convalescent Home, Aurora, Ontario. It is the opinion of both doctors that Brother is in need of psychiatric care. He has entered the Convalescent Home and will probably need from three to five months treatment.

Br. English received a three-day intensive evaluation from doctors of the House of Affirmation in Warwick, Massachusetts. It is the opinion of Father Kane that Brother will require at least six months therapy. I am enclosing a copy of one of the letters received in reference to Br. English.

I thank you sincerely for giving Br. Nash and myself the opportunity to discuss the Mount Cashel situation with you. Whenever it is appropriate, I will appreciate hearing from you.

Asking God's blessing on you and your work, I remain,

Respectfully yours,

'G.G. McHugh'

Br. G. G. McHugh"

The third and bottom folio is an early example of photostatic reproduction and is a copy of the letter which Brother McHugh referred to as enclosing, and evidently proceeds from the Reverend Doctor Thomas A. Kane of the House of Affirmation in Whittensville, Massachusetts in the United States. This letter[64] reads:

"15 January 1976

Brother Gerard G. McHugh, C.F.C.
Provincial
Congregation of Christian Brothers
St. Joseph's Provincialate
R.R. #5
Orangeville, Ontario L9W 2Z2
Canada

Dear Brother McHugh:

This short communication comes in reference to Brother Edward English, C.F.C., who recently was here for complete psychological testing and evaluation.

It is the opinion of the Clinical Staff that he would definitely benefit from a period of residency here at the House of Affirmation and his name has been so noted on the waiting list.

A detailed report will follow shortly.

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[64] Exhibit C-0179C.

Let us continue to pray for one another. I remain

Fraternally yours,

'Father Tom /gpp'

(Rev. Dr.) Thomas A. Kane

TAK/gpp
dictated/not read"

Judge Hyslop said that he noted two unusual aspects of this file: first, as noted above, the absence of copies of the police reports usually kept in the department once sent, and second, the category "personal and confidential" adopted by the deputy minister in his letter to the chief of police, one unknown to the Constabulary and virtually unknown to the department although used by the R.C.M. Police. The term "child abuse" did not suggest sexual abuse to him at the time and he thought that physical abuse only was involved. He believed that the file had been "concluded" by his superior at the time, and his curiosity was allayed.

The R.H. Kelly Case

I shall return to the critical part played by Mr. Hyslop as he then was, but at this point it is necessary to refer briefly to two occurrences which might have led the administration of justice back to 1975 at Mount Cashel. In May 1979 there occurred the prosecution of Father Ronald Hubert Kelly, parish priest at Cape St. George since 1973 on ten charges of indecent assault on males contrary to section 156 of the Criminal Code to which he pleaded guilty. The victims were juveniles, the charges were serious and the case had some unusual features which included the attempted intervention of the then Roman Catholic Bishop of St. George's who appeared at the residence of Magistrate Seabright in the course of the proceedings, the holding of court in Corner Brook at eight o'clock in the morning and the fact that Father Kelly in due course departed by aircraft for "Southdown", otherwise known as the Emmanuel Convalescent Centre in Aurora, Ontario where Brother Ralph of Mount Cashel had been sent for treatment some three and a half years before. Father Kelly was defended by two lawyers in Corner Brook, Michael Joseph Patrick Monaghan and Gerard Joseph Martin. He was prosecuted by William Michael Roche, now a judge of the Provincial Court, then Crown attorney stationed in Corner Brook, who testified to the commission on March 15 and 16, 1990. In the course of his evidence he had the following to say about the opening of the proceedings against the accused:

> **"Q. Did something happen that you particularly recall at 20 minutes past 4:00 p.m. on May 11, 1979?**
>
> **A. Yes.**
>
> **Q. What happened?**
>
> **A. Quite frankly I was mystified at the fact that since the case was set for 4:00 that afternoon, there were only three people present in the court room that afternoon which was courtroom number two which would be Judge Seabright's court. Judge Cramm, the other judge, had courtroom number one. There were only three people in the courtroom at 4:00. Sergeant Ken LeBreton, Constable Murray Urquhart and myself. At approximately 4:20 that afternoon**

Judge Gordon Seabright entered the courtroom to advise me that there was a telephone call for me outside of Provincial Court. So I left the courtroom. I believe I went into Judge Cramm's office at that point which was empty and I was left alone in privacy by Judge Seabright. I closed the door and the call was from John Kelly, the then director of public prosecutions. His first question to me, and I can't possibly forget this, was what is going on out in Corner Brook. I explained to Mr. Kelly that there was a Roman Catholic clergyman charged with 10 counts of section 156. I explained briefly to him the circumstances of the case and I then asked Mr. Kelly why he had phoned me because I was obviously a little concerned at that time that there might have been some political interference. He advised me that the two defence lawyers, Mr. Monaghan and Mr. Martin had telephoned him in an effort to reach then the Attorney General in Newfoundland, T. Alex Hickman, in an effort to get the charges withdrawn. I explained to Mr. Kelly that in my opinion at least, after having explaining to him briefly the facts, these charges were simply too serious to be withdrawn. That explained to me why neither Father Kelly nor the two defense lawyers were in the courtroom at 4:20, they were absent even though the court case was supposed to proceed at 4:00. Basically Mr. Kelly concurred, gave me full consent to proceed with it and there was absolutely no political interference whatsoever. Now I'm not 100% certain whether he told me, but I believe I may have asked him where were the two lawyers phoning from, but in any event I am not 100% certain of that, but I do recall this. I knew at the time that there was this telephone

> **in the Barristers' robing room on the sixth floor of the Sir Richards Squires Building. I left Judge Cram's office after the telephone call from John Kelly and proceeded by the elevator to the sixth floor where I discovered the two lawyers in the Barristers' robing room. I can't recall saying anything to them, no discussion was made by them to me or by me to them with respect to what had been attempted behind my back. They had not given me any inkling whatsoever that they were going to make these efforts to get the charges withdrawn, but then it became palpably obvious to me that this case was taking a turn for the worse."**

In his evidence given to the commission, on March 29 and 30, 1990, Chief Justice Hickman said that as minister at the time he recalled being telephoned by Mr. Monaghan who advised him of the situation of Father Kelly, said he had made certain proposals to the local prosecutor and to the director of public prosecutions who had rejected them and would he, the minister, be prepared to review Mr. John Kelly's decision. The minister's recollection of what followed was as stated by Chief Justice Hickman:

> **"I said Mr. Monaghan the answer is no. I have never reviewed a decision with respect to the laying of charges of a director of public prosecutions. And he said I suspected that would be the answer, but you can appreciate I am obliged to carry out my instructions. That was really the end of the conversation and I was anxious, as I say, Mr. Monaghan acting very professionally and didn't try to press his clients case, he just simply did that. As we were sort of signing off he mentioned to me, either he mentioned the words Mount Cashel or he mentioned the word Christian**

Brother. I am not sure which. I had no idea what he was talking about and I certainly didn't say well what's all that. We hung up. I immediately called in John Kelly, not because of that last comment, but having been advised that the director of public prosecutions was aware that counsel for the accused was going to try and contact me, I wanted the director of public prosecutions to be made aware immediately of my decision. So Kelly came in and I said to him, "John I just had a call from Michael Monaghan who is representing a Roman Catholic priest on the West Coast and he asked me to review your decision and I simply want to tell you that the answer is no, I was not prepared to review it nor did I ask for any of the details" nor did I ask John Kelly either. He said fine. We started to walk out together and as we were partially out the door I said, "John, he also mentioned something about, I can't remember if he said Mount Cashel or Christian Brothers, but either way John's reply to me was well that was a case that was handled by Mr. McCarthy two or three years ago involving a Brother or Brothers at Mount Cashel. He said I don't know any of the facts surrounding the case, but as far as I know it was properly handled. And we parted company. That was the one and only time. It was the first time that I had ever heard of Mount Cashel. He was very reassuring. He may have said to me at the same time that it came up at the Soper Inquiry. I don't know. If he did, if he had said it well I would have found that very reassuring because as you know under the Soper Inquiry one of his terms of reference was to find out whether there was any justification for the improper release of the police report. So if he did tell me I would have felt very secure in knowing that if there was any problem with whatever it was that transpired at Mount Cashel Judge Soper would deal with it."

Curiously enough in his evidence to the commission Mr. Monaghan said that it was his co-counsel Mr. Martin who had spoken to the director and the minister and Mr. Martin adopted what he said. It is difficult to believe that the chief justice would introduce the name "Monaghan" unless it was actually given, and it is possible that Martin said that he was calling *for* Monaghan or something of the kind. What is certain is that Mount Cashel and the Christian Brothers were mentioned by the caller and I find what had happened in December 1975 and January 1976 was being suggested as a solution to Father Kelly's problem.

* * *

The Burton Case

The idea that perpetrators of sexual assaults upon children in breach of the enacted law should be entitled to treatment rather than condemnation by the courts was to persist. On December 11, 1989 Ronald James Richards, Q.C., a member of the legal staff of the department of justice in Newfoundland since 1978, and from July 1985 to May 1989 deputy minister, testified before the commission. In a letter dated November 2, 1982 while he was senior crown attorney for the eastern district of Newfoundland (for practical purposes the Avalon Peninsula) Mr. Richards, after reading a "justice report" by Detective Sergeant Leonard Power[65] and a report by Mrs. Karen Alexander, social worker,[66] directed that a charge of gross indecency, to wit: the act of oral intercourse with a juvenile contrary to section 157 of the Criminal Code be laid against Brother David Jerome Burton.[67] Brother Burton was a resident of Mount Cashel in charge of twenty boys at a time when important reforms had been undertaken in the institution, the size of dormitories had been reduced, and the dormitories redesigned. On being interviewed by Power, Brother Burton had written a statement in his own hand admitting the truth of the charge that his relationship with the juvenile in question - a delinquent child welfare ward resident in Mount Cashel - had lasted about a year and oral sex as well as attempted buggery had taken place. Burton's solicitor and ultimately counsel, William English, intimated to Richards that his client would plead guilty provided that a conditional discharge would be recommended to the court and that the proceedings be held *in camera*. This suggestion was declined, but Mr. English advanced the proposition in an application to Judge E.J. Langdon of the Provincial Court before plea or election on November 17.

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[65] Exhibit C-0201.

[66] Exhibit C-0206.

The learned judge dismissed the application after lengthy argument, and after taking an election of trial by him alone and a plea of guilty, sentenced the accused to four months in Her Majesty's Penitentiary and three years probation, during which time he was to seek psychiatric assistance and be guided by his psychiatrist's directions. In his reasons Judge Langdon pointed out that the act of gross indecency alleged was not "a single isolated incident, or as one of the witnesses indicated a moment of weakness, but some fifty or more single incidences *(sic)* over a period of time". This observation was derived from the accused's statement to Detective Sergeant Power and written by himself. The judge then adverted to the situation of the accused in relation to his victim as being a position of trust and in charge of children compelled to submit, as wards of the director, to the guidance of the Christian Brothers, saying "these children as the evidence disclosed are placed there with that in mind to rebuild their trust in people, to rebuild their broken lives as was indicated by the witnesses". In view of the general consensus that the effect of sexual abuse on a victim was not taken seriously until almost the present day, what fell from the judge at the end of 1982 on the subject should be quoted:[68]

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[67] Exhibit C-0203.

> **"Has W.N. been hurt physically or mentally? Well, there is certainly no evidence that he was hurt physically. There is no direct evidence that he was hurt mentally. However, evidence from the brothers who gave testimony in this case and the argument presented in the accused *(sic)* brief to the court very strongly in application to have this case closed to the public and to the press, indicated that very explicitly that any publicity about this case could have a very serious, detrimental effect on the 85 or 90 boys that still live at Mount Cashel. It would have a shattering effect I think were the words used. Now, that's hearing about it, but one of the witnesses wasn't prepared to say that W.N., who was the victim in this case, would have any effect on him at all. That is certainly not consistent with logic or common sense in this court's opinion. If hearing about a matter is going to cause some shattering of a person's rehabilitation, then certainly being a victim obviously must."**

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[68] Exhibit C-0204A, p.174.

Under the circumstances reviewed by Judge Langdon a sentence of four months imprisonment and three years probation for an offence attracting a maximum penalty of five years may not appear to be excessive, but the Court of Appeal per Mifflin, C.J.N.; Gushue, and Mahoney, JJA.,[69] considering Burton's appeal no later than December 1, reduced the sentence to time served - twelve days - and varied the probation order "to the extent that the appellant is ordered to subject himself to such psychiatric and other rehabilitative measures as deemed necessary by the Brother Provincial in the order of Christian Brothers".

Mr. Powell suggested to Mr. Richards that when he, Powell, had first read the transcript of Richards' vigorous cross-examination of Brother Bellows at the trial it was motivated by some knowledge of the aborted investigation of 1975 - 1976. But Richards had been in Corner Brook, far removed from the gossip of that day, and felt as he said that in Burton he had "the bad apple". This no doubt explains why he was incredulous as to how the demand for concealment by *in camera* proceedings could be supported by the view that one disclosure could fatally prejudice the reputation of an order like the Christian Brothers of Canada, but Brother Bellows was better advised. Richards admitted that this was probably the most aggressive appearance he had ever made in a courtroom and there is no doubt that his advocacy was sharpened by the audible comments of Christian Brothers inside the court protesting the position taken by the Crown as if it were a safe assumption that the congregation could look after Brother Burton in its own way. Richards was particularly disturbed both in the proceedings before Judge

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[69] Exhibit C-0209.

Langdon and those before the Court of Appeal where much emphasis was laid upon the importance of rehabilitating the offender and, with the exception of the judge's perceptive comments which I have quoted, nothing was said about the plight of the retarded victim who was referred to in the latter court as a "punk".

* * *

The Stead Crawford Letter

Nevertheless the bitter harvest of 1982 was not yet reaped. Just as the Burton prosecution was the result of a painstaking investigation by social worker Karen Alexander, that of an experienced colleague, Hugh Stead Crawford, in association with Mrs. Alexander and Mrs. Sandra Morris of the St. John's East district office of which Neil Hamilton, formerly co-ordinator in the office of the director, was the supervisor, was equally critical. Their investigation began with consideration of a letter written by Mrs. Sarah Murphy of St. Bride's, the grandmother of one of two boys who had run away from Mount Cashel, had slept out of doors and had finally taken refuge with her, to the Honourable Thomas V. Hickey, minister of social services. The letter was dated February 11, 1982 generally and haltingly informing him of rigorous treatment at Mount Cashel provoking other runaways, a sample of which is as follows:[70]

> **"I kept those boys for twelve days which cost me a nice price to feed them I also bought inside clothes for them to change Hope the whole matter would be**

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[70] Exhibit C-0294, p.1.

> **looked in too by the time the boys would go back and very little as far as I know was done about it I do know [Boy 1] got to set on his bed for 30 days Some people don't get that punishment for robbery and I think those poor children are hurt enough by being sent from their parents and home not to be treated like this by Christian Brothers where is charity our government pay 60 per cent of the cost of running that place."**

On March 31 the matter was handled by Sandra Morris, acting social work programme co-ordinator at headquarters of the department, referring this letter to the Placentia district office manager and asking for comments from social worker Shirley Stephenson, who had already interviewed the runaway boys at St. Bride's, and in her reply to Mrs. Morris commented:

> **"from observing the boys facial expressions and body movements it appeared that they were telling the truth. However when considering the home's good reputation and the valuable service which has been and is presently being provided, these complaints are indeed questionable."**

No doubt this not untypical departmental attitude would have prevailed since the boys in question were returned to Mount Cashel, but in October superintendent Louis Bucher at Mount Cashel telephoned Mrs. Morris, now back at Harvey Road, and informed her of sexual harassment of younger boys by an older resident who had reached the age of seventeen without progressing beyond grade five special education at St. Pius X School which he had left a year and a half before to obtain employment. He was living in St. Gabriel's dormitory where older boys usually were maintained by the child welfare division on an "extended care" basis. Mr. Hamilton then assigned Mrs. Alexander and Mrs. Morris to a series of interviews, reports of which were forwarded to the department of justice, with the result that Detective Sergeant Leonard Power commenced the investigation which launched the prosecution of Brother Burton already discussed. It soon became clear to both that department and social services at all levels that some twenty-one boys, independently of the two adults under investigation - Brother Burton and a civilian - were engaged in homosexual activities with a degree of persistence not hitherto suspected. Brother Bucher, who had taken charge of Mount Cashel in 1976, was an experienced boarding school teacher and administrator from the state of Washington in the United States, clearly more able and less hide-bound than some of his predecessors and associates. In conjunction with the renovation of the building he had developed much of what had been recommended in the Nelson report and the unwieldy and overcrowded dormitories were things of the past. He had broken new ground by reporting to the child welfare division suspected homosexual activity among wards of the director in his care. Furthermore, the evidence shows that he enjoyed the respect of the great majority of his charges and officers of the child welfare division who had dealings with him, particularly Neil Hamilton, supervisor at the district office involved.

Two reactions at the highest departmental level must be noticed. In connection with the several interviews by social workers, F.J. Simms, responding to a request of the assistant deputy minister, George Pope, forwarded copies of "the reports we have on file at this office pertaining to residents of Mount Cashel Orphanage". This memorandum - and presumably its attachments - was minuted to the deputy minister, Gilbert

Pike, who, as the evidence of these officials and witnesses who knew the handwriting indicates, wrote on it "Minister to see 82-11-26." Two days prior to the date thus recorded Mr. Pike had sent copies to the deputy minister of justice, "Attention Mrs. Mary Noonan".

In their evidence before the commission Mr. Pope and Mr. Pike were satisfied that these reports had been seen by the minister although they were unable to describe the occasion; perhaps they had been left on his desk. Mr. Hickey vehemently denied ever having seen them when he testified on March 23, 1990. He said he had followed up the Burton matter two or three times, but that he had had "absolutely no knowledge of any other Mount Cashel incident". He was astounded and felt betrayed; he said that the Simms - Pope - Pike memorandum had never reached his desk; if it had, since it was a headquarters file, it would have contained a note from him as to having been seen or for any action required.[71] He also specifically denied having seen a report by Stead Crawford dated August 11, 1982 although there is a memorandum to "The Honourable Mr. T.V. Hickey" from "Stead Crawford" with names blacked out by commission counsel in accordance with a policy of protecting the identity of persons not having appeared before the commission. It was dated August 31, 1982, signed "Stead", was attached to a letter about a family evidently known to the minister, and had nothing to do with the appalling situation disclosed by Mr. Crawford's letter to Mr. Simms of August 11, which Mr. Hickey probably did not see, because if he had, he could hardly have refrained from further inquiry. A version, edited in order to protect the identity of the youths and juveniles involved, reads:[72]

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[71] Exhibit C-0294, p.51.

"1982 11 08

Mr. F.J. Simms
Director of Child Welfare
Department of Social Services
Confederation Building
St. John's, Newfoundland

Re: [Boy 14], aged 12 years old
Child of [... & ... ...]
[...] Street
File # [...-...]

Dear Mr. Simms:

The above named child has been a Temporary Ward since December 1979. In the fall of 1979, [Boy 14], then 9 years old was placed in Mount Cashel because of increased behaviour problems at home. He was constantly running away from home, using obscene language towards his mother and generally upsetting his family.

Much effort had gone into this family in trying to teach his parent *(sic)* new skills in child care and discipline but because of the parents limited intellectual abilities, little success was obtained. His behaviour did not change and though not considered serious, it continued to cause considerable stress in the family.

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[72] Ibid, pp. 34 - 36.

Mrs. [...] has a very volitile *(sic)* temper and concern was expressed by her that she might lose her temper and seriously hurt him.

In October or November, the [...]'s requested that [Boy 14] go to a place where someone could teach him how to behave. When the option of Mount Cashel was explored, the [...]'s felt happy that [Boy 14] would go there. In November 1981, *(sic)* [Boy 14] was placed at Mount Cashel and in December, he was made a Temporary Ward for 12 months. This wardship was extended for twelve months in December 1980 and again in December 1981.

In May 1982, [mother] requested that [Boy 14] come home for good. She felt that his behaviour had improved tremendously, which it had, and that she was better able to care for him. Though I felt that she really couldn't, I advised her that we would seriously look into this at the end of the school year. However, shortly after that [Boy 14] ran away from Mount Cashel and I decided to let him move home.

[Boy 14]'s behaviour remained good for a short while but around the end of June, [Boy 14] was caught sticking a rat-tail comb in the vagina of his younger sister [...], aged six. This upset [mother] tremendously and though there was no damage, she has totally rejected [Boy 14]. She does not trust him at all and feels that he is very sexually active.

Because of the total rejection of [Boy 14] by his mother, I tried to have [Boy 14] placed in a group home. However, it was decided, in consultation with representatives on the advisory committee, that his behavior at home was not bad enough for such placement and perhaps a special foster home would better meet his needs. Since this would take some time

I decided to talk to [Boy 14] about acceptable sexual behaviour and perhaps give him a lesson in sex education.

On 1982/11/05, I visited [Boy 14] at his home. [Boy 14] is now a tall boy about 5' 9" and is sexually mature. His voice has deepened and he is growing pubic hair. Though he is more mature than his twelve years, intellectually he is functioning at about nine or ten years. His I.Q. is around 75 - 80 which places him into the dull-normal range. He is in the grade V multi-level programme at Eugene Vaters School and is doing reasonably well academically and behaviourly.

I talked to [Boy 14] alone for about an hour that afternoon. We started off with his own physical development and what it means. During the conversation I talked about sexual contact between boys and the *(sic)* such contact is fairly normal in most boys his age. He started to talk about his own experiences, experiences he had while at Mount Cashel.

When [Boy 14] first went to Mount Cashel, he shared a room with [Boy 5] who at that time was twelve years old. [Boy 5] became [Boy 14]'s best friend then and this friendship continued until [Boy 14] left Mount Cashel in May 1982.

[Boy 14] tole *(sic)* me that [Boy 5] would always grab his penis and later developed into oral sex. [Boy 14] was quite shy about telling all this, but eventually he stated that this behavior developed into mutual oral sex and eventually mutual anal sex. [Boy 14] stated that this behaviour started within weeks after he went to Mount Cashel and continued regularly later on until [Boy 14] left the Orphanage. [Boy 14] stated that sometimes [Boy 5] would hurt him, by biting his penis but this didn't happen too often. In relation to the anal sex, [Boy 14] stated it would only hurt if he didn't relax, but if he relaxed, it didn't hurt at all.

I continued to talk to [Boy 14] about this sexual behaviour especially concerned if [Boy 14] was sexually active with other boys. [Boy 14] stated that one time, his roommate, [Boy 4] caught [Boy 14] and [Boy 5] engaging in sex. [Boy 4] didn't report it but became sexually active with [Boy 14] as well. That relationship continued on a regular basis as well and also involved [Boy 4]'s older brother [Boy 1]. [Boy 14] stated that he was regularly involved in oral and anal sex with [Boy 1] and [Boy 4] for a long time up until he left.

[Boy 14] denied he was involved with any other boys. He did state however that [Boy 3] caught him and [Boy 5] and reported them to Brother Bucher. He stated that Brother Bucher slapped them both, but neither stopped. He also stated that [Boy 15] and [Boy 7] caught him at "it" but he was never involved with either boy. He did state that he once saw [Boy 5] masturbating [Boy 16] in [Boy 15]'s room, but [Boy 14] stated that he didn't stay but went back to watch T.V.

[Boy 14] really doesn't know the implications of this behavior. He never told anyone at Mount Cashel especially the Brothers because he performed the sexual acts on the other boys as much as they did to him. Most of the behavior happened either in the showers or in his room. He doesn't feel that it was all that wrong but is embarrassed about talking about it. He obtained pleasure out of it as the sexual behavior either oral sex or anal sex lasted until each party had reached a climax. [Boy 14] was even able to describe the flavour *(sic)* the sperm fluid.

In conclusion, I feel that [Boy 14] has been involved in an ongoing homosexual behavior with [Boy 5], [Boy 1] and [Boy 4] for over two years, while a resident of Mount Cashel. Though [Boy 14] is considered slow, he was able to give vivid detailes *(sic)* of homosexual activity including mutual intercourse. His descriptions were too accurate to be fabrications or stories told him by other individuals. The feelings he felt while engaged in this behaviour seemed to be in line with homosexual activity.

It is, however, interesting to note that there were a few things that I find very disturbing. One is that [Boy 14] was engaged in this activity for a very long time on a very regular basis. According to [Boy 14] and I have no reason to doubt what he told me, he was engaged in sexual activity every other night. Surely if this behavior was so prevalent, that some time down the road, some adult in an official role would have seen something going on? Secondly, it is a well know fact, that homosexual activity is fairly prevalent in all male institutions. Such well known institutions as Eton and Harrow have all had publisized *(sic)* homosexual behavior appear from time to time. With this knowledge, then it can be safe to say that some homosexual activity is going to occur at Mt. Cashel from time to time. However, in [Boy 14]'s case, the homosexual activity was way above what would be considered normal to expect and that I feel there seems to have been a complete neglect of acceptable sexual education in this institution and possible supervision. In [Boy 14]'s case, he did relate that he and [Boy 5] were reported to Brother Bucher which should have meant a referral to a Social Worker for counselling as well as the punishment.

I do not know if [Boy 14] was sexually active with boys outside Mount Cashel or adult males in the orphanage

> **or outside. By the time I had obtained the information I did, [Boy 14] was very tired and restless. I will visit [Boy 14] again and pursue these other areas with him at a later time.**
>
> **Yours truly,**
>
> **'Stead Crawford'**
>
> **Stead Crawford**
> **Social Worker**
>
> **'Neil Hamilton'**
>
> **Neil Hamilton**
> **Social Worker Supervisor**
>
> **SC/pan**
>
> **cc:Mr. J. Quinlan, Regional Director**
> **cc:Mr. R. Barbour, District Manager (Acting)**
> **cc:Sgt. Power, Royal Nfld. Constabulary"**

In the midst of the investigation, now assuming widespread proportions, deputy minister Gilbert Pike wrote to Mrs. Mary Noonan expressing his concern that "children and young persons in the care of the Director of Child Welfare and in residence of Mount Cashel" were interviewed by the police without the knowledge or involvement of officers of his department. He added that he had "shared" with Mrs. Noonan his wish that whenever one of these was interviewed by the police a social worker should be present. As to the two interviews already completed he hoped that justice would consult with appropriate officials of social services when the reports were being reviewed, and ended by asking the solicitor to provide him with a legal opinion "in light of these stated concerns". In the meantime the two departments were in close liaison on the problem of homosexuality at Mount Cashel as indicated by a memorandum from Robert Hyslop, assistant director of public prosecutions to Mary Noonan on the civil side of his department.[73]

> **"1982 11 10**
>
> **Mrs. Mary Noonan**
> **Solicitor**
> **Department of Justice**
>
> **RE: Mount Cashel Orphanage Investigation**
> **R. v. David Burton**
>
> **Further to our meeting of 10 November, this is to confirm that you have been made privy to all the facts surrounding the police investigation into criminal behaviour at the Mount Cashel Orphanage.**
>
> **For my records it was my understanding that Detective Power was given a clear direction as to how his further investigations should proceed since he sought our advice in that regard. We advised that older juveniles victimizing younger children and persons in authority should be clearly investigated and charges laid if warranted.**
>
> **On a more serious matter, having read the memorandum of Mr. Stead Crawford to the Director of Child Welfare, it was decided among us that there were only two viable options which could be put to the Director of Child Welfare. You undertook to follow**

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[73] Exhibit C-0294, p.39.

> **this up with the Department of Social Services, and I would appreciate it if you would informally advise me of any decision made by the Director in this regard.**
>
> **'Robert Hyslop'**
>
> **Robert B. Hyslop**
> **Assistant Director of**
> **Public Prosecutions**
>
> **RBH:dac**
>
> **cc Det. Sgt. L. Power**
> **Mr. Ronald Richards"**

Neither Madam Justice Noonan nor Judge Hyslop could recall what the "two viable options" were on which the director of child welfare might be expected to proceed and there is no further evidence on the subject. The expression may well have referred to the director's dilemma about prosecuting juveniles who were his wards.

Somewhat incongruously, on December 1, Brother Bucher addressed a long letter to F.J. Simms summarizing "concerns" raised at a meeting in the latter's office and putting forward proposals for social workers - no less than four - to monitor the progress of boys at Mount Cashel, and to discuss their problems with each boy and with the Christian Brother in charge; and increases in the staffing of the institution by Brothers and associates employed full-time. He also appended a compromise proposal in the event of the first one proving too expensive. Two days later Mr. Hyslop was still contemplating the laying of charges against the older offenders at Mount Cashel and Detective Sergeant Power was beginning to doubt the reliability of the young complainant as a witness in the case of a civilian volunteer worker who aspired to become a Christian Brother. In the end all contemplated charges were reconsidered and none was laid because of the reluctance of parents to allow their sons to become involved as complainants, the unreliability of some witnesses and generally the reluctance of Power and his superiors to "criminalize" residents of Mount Cashel at the time. Any notion that these events were concealed or covered up in government circles is easily dispelled by reviewing the profuse documentation maintained by the departments involved.[74]

With the exception of a situation in 1985 when two of the youths involved in the investigation of 1982 succeeded in criminalizing themselves by stealing bicycles, affairs at Mount Cashel gave no concern to the Constabulary or their mentors in the department of justice. Indeed the reforms at Mount Cashel sponsored by the provincial council of the Christian Brothers and in particular by Brother Bucher, Brother Devine and Brother Lynch in the position of superintendent were bearing fruit in a manner which bid fair to make the institution a model in the field of counselling and treatment in child welfare cases. The six years that elapsed after the conclusion of the police investigation into homosexuality among the boys at Mount Cashel were undisturbed by any further revelations. The numbers there were in decline and the circumstances of the residents were rapidly improving. Great emphasis was laid upon the work of what was called the "manor", a special unit for treating child welfare wards with marked emotional problems. Much of the progress made in this direction was due to the efforts of Brother Barry

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[74] Exhibit C-0294.

Lynch who became superintendent of Mount Cashel in September 1985 after being director of the Christian Brothers College at Mono Mills, Ontario which, as he advised the commission, no longer exists, there being now no college of the order in Canada for novices.[75] Brother Lynch with the exception of a year spent as director of development at Mount Cashel, continued as superintendent until it was closed. The relationship of the institution with the child welfare division became closer, more professional and more cordial, as it had begun to be under the superintendency of Brother Bucher. But there is no evidence of any "following up" in the form of counselling or other curative measures for either assailants or victims in the outbreak of homosexual activity among the boys in 1982 on the part of either the department or the Christian Brothers.

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[75] Because of this educational activity the establishment at Mono Mills was held to be a "seminary of learning" and thus exempt from real property taxes. *Christian Brothers of Ireland in Canada and the Assessment Commissioner for the Counties of Wellington and Dufferin et al.* [1969] 2 O.R. 374.

Chapter IV: Dies Irae

On February 13, 1989 Robert B. Hyslop, by then Associate Deputy Attorney General received a telephone call from a Mrs. Caddigan asking for a public inquiry into "cover-ups" and specifically referring to Mount Cashel. As Hyslop said in a statement prepared for the Royal Newfoundland Constabulary "I had heard rumours about the Mount Cashel incidents and I thought it involved strapping of children and that charges had not been laid. I advised her that that was long in the past and if she wished to have an inquiry held she should talk to her MHA".[76] The next day he was called by no less than a judge of the Court of Appeal, Mr. Justice John W. Mahoney who said that his wife had called him in chambers asking about allegations on an "open line" radio programme of a "cover-up" by the department in the case of the Elizabeth Towers fire and in the case of Mount Cashel. Mr. Hyslop told the judge that he thought this referred to the statements of Sergeant Arthur Pike "formerly of the Royal Newfoundland Constabulary" and recalled looking at a file seven or eight years before about the physical abuse of boys in the orphanage. Hyslop then engaged in a flurry of activity with momentous consequences. He asked Superintendent Leonard Power for all police reports having a bearing. He summoned the director of public prosecutions, Mr. Colin Flynn, and others to a meeting and was joined by the deputy minister, Mr. Ronald Richards. There was a subsequent meeting with the minister, the Honourable Lynn Verge.

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[76] Exhibit C-0213.

Clearly in response to her inquiries he delivered the following letter to her on February 15:[77]

> **"February 14, 1989**
>
> **The Honourable Lynn Verge**
> **Minister of Justice**
> **and Attorney General**
> **Department of Justice**
>
> **Dear Mrs. Verge:**
>
> **Re: Complaint of Homosexual Acts and Child Abuse at Mount Cashel**
>
> **I have now had a chance to review both the December, 1975, and March, 1976 file involving alleged abuse by members of the Irish Christian Brothers at Mount Cashel Orphanage. As I told you in conversation, I felt that I had seen the physical abuse file (March 3, 1976) as a result of curiosity, after the allegations made at the Soper Inquiry. It is my view that the cases of excessive discipline on the part of the Brothers might have been dealt with properly by prosecutorial discretion. They may have been difficult to make out as common assault charges and are now statute barred.**
>
> **A review of an earlier report, however, dated December 18, 1975, which has come to my attention for the first time today, reveals sexual abuse by at least three Brothers on a horrifying scale. I have therefore asked the police to try and find out what**

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[77] Exhibit C-0213.

> **happened in the chain of events to preclude charges from being laid and to continue the investigation with a view to:**
>
> **(a) determining whether we can proceed with sexual abuse charges at this late date; or**
>
> **(b) determine why these people were not brought to justice..**
>
> **I need only say that the amount and type of sexual abuse boggles the mind.**
>
> **I have attached a few sentences should this matter be referred to you.**
>
> **Yours sincerely,**
>
> **'Robert B. Hyslop'**
>
> **Robert B. Hyslop, Q.C.**
> **ASSOCIATE DEPUTY**
> **ATTORNEY GENERAL**
>
> **/vjk"**

The "sentences" which the associate deputy attorney general prudently provided read as follows:[78]

> **"As a result of suggestions which have recently been raised in the public forum, my officials have asked the police to review investigations at the Mount Cashel Orphanage which involved certain allegations of abuse of children in the mid-1970's. I am advised that the Royal Newfoundland Constabulary supplied copies of**

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[78] Ibid.

> **police reports to my senior officials on February 14, 1989, which reveal that an investigation was conducted in 1975 at Mount Cashel Orphanage. This investigation was not completed and my officials have asked the police to re-investigate it and inquire into the reasons why it was not completed. The matter is therefore in the hands of the Royal Newfoundland Constabulary and it would be inappropriate for me to comment further at this time."**

The existence of a draft statement prepared for a minister for use if required serves only to emphasize the absence of any such provision by the deputy minister of the day in December 1975.

On the same St. Valentine's Day, 1989, and in the course of the excitement produced by his realization of the significance of the long-forgotten rumours of fifteen years before, Robert Hyslop wrote to Chief of Police E.J. Coady outlining the nature of the material available and still being sought, and concluded:[79]

> **"I have reviewed this material in detail and have charted possible offences under the old legislative scheme against various persons. (The common assault cases are statute barred). I have therefore focused my mind on sexual related cases and it is clear in my mind that at least one person committed over 100 individual indecent acts on at least 15 boys.**
>
> **Having discovered this horrifying fact on February 14, 1989, what cause of action is open to us?**

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[79] Exhibit C-0213.

> **I have reviewed this and it is my view that we cannot even now let this lie fallow. Where are these offenders? Who else is at risk? Who else has been molested by these people? Where are the victims of the crimes that these people perpetrated? Will they give evidence?**
>
> **Who ordered this investigation terminated and why? I suspect we need to know this before we can lay charges and be confident of our ability to withstand a Charter challenge.**
>
> **In accordance with our telephone conversation of February 14, 1989, I therefore ask you to assign you *(sic)* most senior and able people to:**
>
> **a. complete the investigation into sexual abuse of children at Mt. Cashel, and**
>
> **b. determine why these individuals were never brought to justice. I need to know this in order to deal with these charges once and for all. Is there criminal liability on the part of any person(s) responsible for the termination of this investigation?**
>
> **I cannot over stress the need for urgent action on this file."**

Having secured the approval of his minister and set the wheels in motion for reopening Robert Hillier's thwarted investigation - his two reports of December 18, 1975 and March 3, 1976 were found in a drawer containing disused records of unsolved murders and the like at Constabulary headquarters - Hyslop compiled a statement "for the Royal Newfoundland Constabulary", additionally as an *aide-mémoire* "in the event I am called at any future judicial proceedings to account for a police investigation at Mount Cashel in the mid 1970's" and in acknowledgement of his perception of the importance of contemporary records. This document dated February 17, 1989 should be reproduced from the second paragraph, the gist of the first having already been given:[80]

> **"On February 13, 1989, I received a call from a Mrs. Katherine Caddigan, who is a resident of the provincial riding of St. John's East Extern. She made a request for a public inquiry into cover-ups by the church and made specific reference to an incident at Mount Cashel. I had heard rumours about the Mount Cashel incident and thought it involved strapping of children and that charges had not been laid. I advised her that that was long in the past and if she wished to have to have (*sic*) an inquiry held she should talk to her MHA.**
>
> **The following day, February 14, 1989, I received a call from Mr. Justice Mahoney, who had at one time sat on the Farrell defamation suite *(sic)*. He inquired about the veracity of the Mount Cashel allegations, which apparently had been aired on the Open Line. As a result of his query and my inability to provide detailed answers to him, I decided to investigate further.**
>
> **I could not remember the names of any persons involved or other dates, so I phones *(sic)* Supt. Power of the Royal Newfoundland Constabulary and asked him to locate any material which he might have had on this incident. Shortly thereafter he returned my call and said that he had two reports in his department,**

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[80] Exhibit C-0213.

but no correspondence existed from the Department of Justice. One report was dated December 18, 1975, and the other March 3, 1976. Supt. Power arranged to have these reports copied and delivered to my office by Lieut. Kielly. They were reviewed by the Director of Public Prosecutions and me. The Deputy Minister came in during the meeting. As I recall, Mr. Coffey of the Special Prosecutions Unit was also in my office. We perused the reports and Mr. Flynn, Mr. Richards and I all met with the Minister of Justice and advised that there were strong indications of sexual abuse charges, including confessions having been given by at least two Brothers. We also concluded that the offences were not statute barred and that we felt that we should reopen the investigation. The Minister agreed and I phoned the Chief of Police on the afternoon of February 14, 1989, and advised him to reopen the matter and that a letter would follow.

I took the file home on the night of February 14, 1989, and charted out possible offences against a number of individuals. On February 15, 1989, I directed correspondence to the Chief of Police with the chart attached. I also provided the Minister with a brief note and a copy of the chart for her information. She subsequently returned that to me on February 16, 1989. We had some difficulty in locating any material in the Department of Justice. On February 16, 1989, I was meeting with the Chief of Police in my office on administrative matters, and at that time Mrs. King indicated that she felt that she had found a file not in the criminal section, but in the wardship section at Mt. Scio House. At around noon on February 16, 1989, Chief Coady and I went over to Mount Scio House and received a file entitled "Mount Cashel - re. Child Abuse" bearing government number G-3690. In that file there were three pieces of paper only, namely a letter dated 26 January 1977, from the Deputy

Minister of Justice to the Chief of Police of the day, as well as correspondence, dated January 23, 1976, and January 15, 1976, from clergy.

I recall being curious about these files at some point after the Soper Inquiry and I am virtually positive that I searched out this brief file and saw that the matter had been dealt with by the Deputy Minister of the day and concluded. It was this memory that allowed me to search diligently for the file on February 16, 1989. I also have a recollection that the file on Mount Cashel involved strapping and not sexual abuse. I can categorically state that the first time that I was personally aware of sexual abuse of any sort at Mount Cashel was on February 14, 1989, when I read the police report dated December 18, 1975.

For purposes of the investigation, I can advise that in 1975, when the report was compiled, I was an Articled Student. Mr. John Connors, Q.C., who had been Director of Public Prosecutions, left Newfoundland in September or October, 1975. Between the time that Mr. Connors left and March, 1976, the office of Director of Public Prosecutions was vacant and the duties of the Director of Public Prosecutions were fulfilled by the late Vincent P. McCarthy, Deputy Minister of Justice, who was subsequently appointed District Court Judge. I can recall this because even though as an Articled Student I was working with the R.C.M.P. Commercial Crime Section, virtually all criminal files that came into the Department in that time frame were delivered to the Confederation Building and assigned by the Deputy Minister, who usually put his initials on the upper right hand corner of all documents. Since I was involved mostly with the investigation of the John C. Doyle case, I was not privy to anything involving the Mount Cashel investigation. It is my recollection that

Mr. Kelly was appointed Director of Public Prosecutions in March, 1976. I recall this because I was studying for my Bar exams, which I wrote in March, 1976, and I learned either on the radio or in the Evening Telegram that Mr. Kelly had been appointed Director of Public Prosecutions and Mr. John Byrne had been appointed Chief Crown Prosecutors. *(sic)* These dates can be confirmed by interviewing our personnel branch. I, myself, was not called to the Bar until April, 1976, in Newfoundland.

My recollection of Mr. Kelly's involvement at that time was that he was a lawyer in the Civil Division of the Department of Justice and had no involvement in the Criminal Division. Present in the Criminal Division at that time were John McGrath, Barry Hill, John Byrne, and Allister Murray. Lawyers in the Civil Division who were present in the Department were John Noel, Keith Mercer, Mary Noonan, Jim Nesbitt, Frank McLoughlin and George McAuley.

I note that the last correspondence to the police was dated January 26, 1977. It is my recollection that the Deputy Minister of Justice was appointed to the Bench at around that time. There is no doubt that this also can be investigated independently.

The Mount Cashel file, which I am prepared to turn over to the police, was retrieved by me and copied by Chief Coady at Mount Scio House. I returned it to Confederation Building and made a copy, which I provided to the Minister to advise her about what I felt had happened and retained the file under lock and key in my office. There is no reason to believe that there is further material involving this incident in our files."

Curiously enough Mr. Hyslop was impelled to note on February 22 that the department only had part of the transcript of the Soper Inquiry evidence and only volume II of the five volumes which included as volume IVA the *in camera* evidence released by Judge Soper in mid-March 1979. The complete transcript was quickly supplied to Hyslop by the judge on February 20 and was in the hands of Superintendent Power on February 22. By this time the boy whose injuries had provoked the investigation of December 1975, now employed as a waiter at the Hotel Newfoundland, and till now unsought by social workers or the police, became the focus of public attention.

The Reappearance of Shane Earle

Shane Earle made no complaint of a sexual assault after his return to Mount Cashel in 1976. However he told the commission in his evidence in chief on October 17 and 18, 1989 that he had developed homosexual tendencies as a result of his experience in the orphanage; he had been approached by the police to answer questions in the November 1982 investigation but had declined on the advice of a lawyer to whom he had been taken by Superintendent Bucher. But in 1989, after pondering the cases of Father Hickey and Father Corrigan and hearing of the revival of the investigation of 1975 on a television show, he approached the Constabulary and was warmly received after being put in touch with Superintendent Power and Lieutenant Kielly who interviewed him at length. He testified that these officers had assured him that they would report any developments but after a waiting period which he thought too long, he went to Portugal Cove and spoke to Father Kevin Molloy, telling him stories of

Mount Cashel that upset the priest who promised to make inquiries. Again he did not hear and on March 12 read in the Sunday Express an article by the publisher and editor-in-chief, Mr. Michael Harris, entitled "Miscarriage at Mount Cashel. Where was the rule of law?" The flavour of the article may be appreciated by reading the first four paragraphs:[81]

> **"There is a moral chancre eating away at the fabric of Newfoundland society and it is called the Mount Cashel orphanage scandal.**
>
> **In 1975, the provincial Justice Department agreed not to lay charges against three Christian Brothers who were investigated for the sexual abuse of boys entrusted to their care. According to testimony at the Soper Inquiry, the decision not to charge the priests involved two things; a deal, and the exercise of prosecutorial discretion by the law officers of the Crown. The deal was that the three Brothers involved would be transferred to the United States, never again to be put in a position where they would deal with young boys. The prosecutorial discretion involved looking at a set of facts presented by the police and then deciding that in the broader interests of justice, no charges would be laid.**
>
> **That is where the matter rested until a present-day sex-scandal involving Roman Catholic priests and young boys rocked Newfoundland. With each depraved revelation of how at least two priests abused their trust, abandoned their positions of moral leadership and marked several young men for the rest of their lives, a stunned community reacted first with shock and then with justifiable anger. Against the backdrop of those two convictions, three more pending cases and an ongoing police investigation, the long**

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[81] Exhibit C-0069.

> **muffled cries of orphans abused in the dark of bygone nights echoed from a sordid past that is still shrouded in official secrecy.**
>
> **But this much we know. When the people in the justice department reviewed the Mount Cashel file - the precursor to the investigation being reopened - the officials involved couldn't sleep after reading what the police had reported to the authorities of the day. They couldn't sleep because they were sickened by what they read - sexual abuse linked to sadistic physical assaults on the boys who had come to the orphanage for sanctuary and found instead an anteroom of hell. Their protectors became their tormentors and there was no one to turn to, no one who cared. During the original police investigation, the boys apparently begged the investigators not to return them to the orphanage once the questioning was done. One policeman recalling the event said that they used to drive them around for hours until they reluctantly returned them to Mount Cashel, tortured by images of what they had been told was going on. These same policemen had to stand helplessly by as the Justice Department cut its deal and the alleged culprits were spirited out of the country."**

There is no doubt that this article induced Shane Earle to seek out its author. There is also no doubt that it ensured the establishment of the Royal Commission as described in the Introduction to this report. Mr. Harris was now to have fresh and more detailed evidence from Shane which resulted in a further two-part work from his pen appearing in the next two issues of the Sunday Express.

* * *

Reopening the Investigation

A peculiarity of the work of this commission which could have created serious problems of jurisdiction and organization was the almost coincidental investigations of the Royal Newfoundland Constabulary. Much credit is due to Chief E.J. Coady, Superintendent Leonard Power and their colleagues on the one hand and commission counsel and investigators on the other that the operations of each were harmonious and helpful with regard to the furnishing of materials and the occasional overlapping of inquiries. The Constabulary in this respect were first in the field by some three months, but the publicity attendant upon the appointment of the commission and the activities of counsel and its experienced investigators Weldon H. Orser and G. Frederick Horne, both retired officers of the Royal Canadian Mounted Police, attracted a wealth of information which made co-operation essential and the results mutually helpful. The Constabulary were no doubt heartened by a letter from Mr. Hyslop of April 25, 1989 in which the department took a firm stand on the often vexed question of the separate functions of the police and of the law officers of the Crown. Its opening sentences should be reproduced:[82]

> **"The Director of Public Prosecutions and I have been reviewing past practices that prevailed in terms of the relationship between your Force and this department when the question arises about the propriety of laying charges against any person or persons. In all but the most routine matters, there has been a practice for the Royal Newfoundland**

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[82] Exhibit C-0349, p.6.

> **Constabulary to simply compile a police report and refer the matter to the Department of Justice for a decision as to whether or not to lay charges. This is a practice which can be unhealthy, both for the police and the department as it tends to interweave each of our respective roles and functions. It seems to me that it is the sworn duty of a peace officer to lay charges wherever he or she determines there has been a breach of the law. It is, therefore, in my view a police decision whether or not charges should be laid in any given case."**

It was at the same time made plain that the legal staff of the department would be ready at all times to provide advice when it was asked for as to the sufficiency of evidence and like matters. On May 2 the deputy chief of police Allan Thistle advised all divisions of this change of policy and appropriate forms were produced in order to make it effective.[83] Still the public was not generally speaking aware of what progress was being made, and indeed there are always difficulties in keeping it informed about police investigations; because of the necessity of anticipating every move of persons suspected of having committed criminal offences they must be conducted as much as possible in secret. An illustration is provided by a letter which Mr. Powell found it necessary to write to the chief on October 19:[84]

> **"On 18 October 1989 Shane Earle testified at the Royal Commission about his attendance at RNC Headquarters on the evening on 16 February 1989. He met for several hours with Superintendent Len Power**

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[83] Exhibit C-0349, pp.15 - 18.

[84] Ibid, pp.19 - 20.

> **and Lieutenant Kielly and a written statement was taken at that time.**
>
> **Mr. Earle then testified he heard nothing from the RNC and when he saw an article in the Sunday Express on 12 March 1989 and decided to seek out Publisher Michael Harris because he feared, in effect, that the police were not doing anything.**
>
> **I stated publicly to the Commissioner that the police were in fact, conducting an investigation although this was probably not known to Shane Earle.**
>
> **This issue having been raised, I feel it would be appropriate for a report to be prepared for the Commission setting out the steps taken by members of your force following receipt of the request from Judge Hyslop to have the Mount Cashel investigation re-opened.**
>
> **This should cover the time period from the request from the Justice Department to re-open the investigation until Lieut. Twyne laid charges - I believe on or about 04 April 1989, and should include statements from the various officers involved in the investigation as well as from yourself.**
>
> **If this could be prepared within the next two weeks it would be appreciated."**

This request was promptly complied with and it is now generally agreed that police forces must bear in mind the desirability of keeping members of the public informed particularly in the case of informants or complainants who, having made a commitment to assist the ends of justice, are anxious to be reassured that their efforts are being acted upon.

On the heels of Powell's request came a *cri-de-coeur* from Power to Coady. He began:[85]

> **"As you are aware, in recent months this Division (C.I.D.) and particularly our Major Crime Section have been intensely involved with matters arising from the re-opening of the 1975 Mount Cashel Investigation. The offences and subsequent investigations relating to that institution (Mount Cashel) have attracted public attention nation-wide, especially since the commencement of hearings by the Hughes Royal Commission. Further investigations arising from evidence at that inquiry, have placed a severe burden on our already limited resources.**
>
> **In recent days a number of serious complaints, arising from the Hughes Commission have been referred to our force for investigation. There is every indication that those referrals by the Commission of Inquiry resulting from anticipated disclosures of abuse will continue in the immediate future."**

He continued by saying that in the light of the excessive caseload carried by the major crime section of his division as a matter of routine, he was concerned about its "ability to effectively deal with matters related to Mount Cashel and arising from the Hughes Inquiry". He therefore recommended the immediate establishment of a special investigating unit to handle all complaints of sexual and physical abuse at Mount Cashel, and any other such complaints and "other criminal matters arising from or referred by the Hughes Royal Commission". This request was supported by statistics showing an unprecedented rise in the incidents of complaints of child physical abuse and child sexual abuse in the major crime section. In the meantime much had been accomplished in the process of completing the 1975 investigation into sexual abuse of children at Mount Cashel by Lieutenant Freeman Twyne and in investigating the possibility of obstruction of justice by Superintendent Power and Lieutenant Alex Kielly. All three of these officers, Power as officer in charge of the C.I.D., Kielly in charge of its operations and Twyne as officer in charge of the major crime section continued to be responsible for their regular duties.

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[85] Exhibit C-0349, p.21.

The special investigative unit was in place by the end of November as an extension of the major crime section, staffed by five officers in part seconded from other sections of the division. A memorandum to C.I.D. personnel from the officer in charge of November 16 conveying this information includes the following:[86]

> **"Disclosures from the Hughes Royal Commission of Inquiry have lead to a number of investigations involving Foster Homes and other child care institutions."**

As a result the special unit was entrusted not only with "the investigation of all complaints of sexual or physical abuse arising from or referred by the Hughes Royal Commission", but with all complaints of sexual and physical abuse occurring in child care facilities or institutions. This development reflected the expansion of the commission's perceived obligations under article II of the terms of reference. By the end of the year the special unit had developed a new and close relationship with the child welfare division of Social

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[86] Ibid, p.42.

Services, and procedure for joint interviews by its officers and social workers in cases involving the questioning of wards of the director was in the course of completion.

* * *

Problems of the Royal Commission

In December 1975 there were ninety-one pupil residents of the Mount Cashel Boys' Home and Training School of whom all but one were wards of the director of child welfare. During the investigation conducted by Detective Robert Hillier, assisted by Detective Ralph Pitcher, thirty-one people had been interviewed in one way or another: there were five adults, including two Christian Brothers, and twenty-six boys ranging in age from eight to seventeen with an average of eleven to thirteen years. I say "interviewed in one way or another" because only boys ten years old and over were asked to sign written statements, and when they were under that age and gave statements these were written out by one or other of the investigating officers, but not signed. One at least was unfortunately written down in Detective Hillier's notebook, destroyed with all its companion books in 1986 when he became a commissioned officer. Of the twenty-six pupil residents interviewed twenty-five gave statements and three of these gave two each. Most of the boys, according to Hillier, were either frightened or in tears; the condition of one was such that Hillier was not anxious to take a statement from him. Indeed the arrangement whereby Brother Kenny was to drive the boys to the police station for the purpose of interview was enough to implant a fear in all the younger boys, several of whom testified that he had told them not to tell the police about anything he had done. I have already mentioned the tears of Andre Walsh when he displayed his ravaged hands. The reason for selecting the twenty-six boys is not easy to analyze, particularly as Mr. Hillier was not too sure himself. He felt that Shane and Billy Earle had given him some leads. There is no evidence to suggest that the boys were either volunteers or selected by the superintendent, an unlikely possibility under the circumstances. Nevertheless there is no doubt that the boys feared retaliation at Mount Cashel and this must have had a stultifying effect on many of the statements; it is surprising that so many deadly allegations were made.

It was the task of the commission not only to invite those who had made complaints in December 1975 to testify but also to locate them, not particularly easy since many of them had left Newfoundland for various parts of North America; one who testified was Leo Gerard Rice from Oklahoma, the great, great, great-nephew of the founder of the Christian Brothers of Ireland. There were two applications for hearings *in camera* which, by virtue of the terms of reference and with the advice of commission counsel, I allowed over the vigorous and sustained objections of counsel for the Canadian Broadcasting Corporation and Canadian Newspapers Company Limited (for the Evening Telegram of St. John's and the Globe and Mail of Toronto). The "demands" of the corporation and the objections of the press were subsequently reduced to an application to obtain access to the record of these hearings and to be assured of notice of any future applications for hearings not open to the public. My reasons for receiving this evidence *in camera* and maintaining its confidentiality throughout the life of the commission may be found as delivered on November 8, 1989 at appendix E.

On November 17, 1989 Mr. Day was able to point out that all but eight of the twenty-six had testified in public hearings and one *in camera*. Of the eight one was yet to be heard, as it transpired *in camera*, and seven had declined to appear on various grounds, some having discussed the matter with commission investigators first, and others having resorted to evasive action. All had been served with a summons and the question at once arose: should the commission take contempt proceedings by citing those who had failed to comply with it before the Supreme Court of Newfoundland under the provisions of the *Evidence (Public Investigations) Act,* R.S.N. 1970, c.117? These extreme measures had so far not been resorted to, and it was decided by me on the recommendation of both commission counsel that they should not be employed in these cases; nor were contempt proceedings ever commenced, all of the men and women who testified having done so without compulsion. Of the seven remaining one finally did testify and one gave a deposition to counsel. Five remained obdurate, and all documents have been edited to delete any clues to their identities as will be seen at appendix C, the December 18, 1975 police report,[87] although "profiles" were entered in evidence, and their statements to the police at the time with the necessary deletions.

Nature of the Complaints

A more serious problem began to emerge as witness after witness in the fall of 1989 told the commission before the television camera of the indignities they had suffered as boys at the hands of Christian Brothers who were their teachers and monitors and in whom parents, relatives and social workers, generally speaking, placed absolute trust. Grown men were seen to break down and weep at the recollection of the events which they were describing. The rising tide of public indignation was matched by the increasing number of charges being laid. When the complainants of December 1975 had been heard and the statements made then put to them, the work of the commission in this area was largely done. Some further residents of the period at Mount Cashel had to be heard to explain why they were not interviewed or did not come forward, and in this connection it was inevitable that complaints that might have been made in 1975 were given an airing in 1989. On January 29, 1990 a question long in doubt was resolved by Mr. Powell and Mr. Day advising me in turn that, after agonizing over many days and nights, they were of the view that the Christian Brothers implicated by the allegations of their former charges should not be called as witnesses. The door was left open, of course, for these men, all of whom at this time had legal advice and standing before the commission, to testify of their own volition, but no application to the purpose was given. This decision was received with mixed feelings and two leading newspapers of the province were sharply divided, one in its praise and the other in its condemnation. None the less concern with the historic right to a fair trial could not be overborne by transitory feelings of revulsion, nor could the prosecution be hampered by any failure to appreciate the effect of section 13 of the *Charter of Rights and Freedoms* which might deprive it of the ability to use vital evidence obtained in a forum other than that of trial.

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[87] Exhibit C-0137.

Rather, therefore, than attributing aspects of the evidence to the men who gave it, or against any one of the men alleged to be offenders, an attempt must be made to deal with the allegations of physical and sexual abuse in general terms without attribution of any kind. The most common complaint was of what might be nicely called "excessive punishment" but to the witnesses who recalled their days in the orphanage was known as "strapping" and "beating". Strapping was often violent and insensate with bruising and blistering of hands and arms up to the elbow joint, and frequently laid on, not systematically, but with furious anger. Beating was in the main hitting the bare buttocks with a strap or stick but went as far as punching, kicking and banging heads against a wall. A common complaint was that the boys did not know why they were being punished. Sexual abuse often began with kindliness and demonstrations of affection, culminating in fondling the naked bodies of the boys and particularly their genitals. Of a more aggressive nature was forcing the victims to attempt, but seldom complete fellatio, and the same applies to buggery long known to the law as the "abominable crime". Mutual masturbation and ejaculation against or on the person of the victim were also complained of and described. The younger boys appeared to suffer more from the ministrations of their preceptors both in the dormitory and the swimming pool. Complaints were not confined to what transpired within the precincts of Mount Cashel, but extended to recreational trips to Terra Nova Park and Witless Bay and excursions in motor cars which led to sexual invitations and assaults.

* * *

Testimony and Charges

After the organization meetings of June 28 - 29 and August 14, 1989 the public hearings of the commission began on September 11, and a measure of the preparation accomplished in the interval is that these continued every day without pause except for Saturday and Sunday until the end of the month when it was necessary to take a recess until October 11. The first witness among the young men who had given statements as children to the police in December 1975 was Johnny Williams on September 19 and 20, and by the end of November most of those who were willing to testify had been heard. In addition to Williams there was Leo Gerard Rice, Gerard Joseph Brinston, Andre Joseph Walsh, Dereck John O'Brien, Gregory James Preshyon, Peter Robert Brown, Robert Michael Connors, Gregory Patrick Connors, John Dwyer Pumphrey, Ian Cameron Pumphrey, Francis Patrick Baird - first interviewed with brothers Malcolm Baird and Edward Strickland at home in Mount Pearl - and Gerald Edward Nash. Two of the former residents of the orphanage were heard *in camera*; a third, Craig Edward English subsequently testified and a fourth, Roy Joseph O'Brien, made a deposition.[88]

In 1975 - 1976, for his two reports, Detective Hillier, with the assistance of Detective Pitcher, had thirty-two people interviewed, twenty-six of whom were under the guardianship of the director of child welfare, either as permanent or temporary wards or under non-ward agreements; if his investigation had not been terminated by higher authority he would have conducted more interviews and, logically, of all the boys and Christian Brothers at Mount Cashel. Upon the reopening of the investigation and the determination to complete it interviewing members of the order was not practical, but in respect of making contact with all of the ninety-one residents of Mount Cashel in care in December 1975 the commission took the initiative. By March 21 Weldon H. Orser was recalled to the stand for the seventeenth time and under examination by Mr. Day introduced three volumes of a proposed exhibit entitled "Completing the 1975 Mount Cashel Investigation", which were duly entered in evidence and explained by the witness.[89] Volume I consisted of memoranda and reports passing between the department of justice and the Constabulary following the instructions to the latter to reopen the 1975 investigation on February 14, 1989.[90] Volume II contained ninety-one copies of a questionnaire prepared by the commission - one for each resident named and unnamed - as to the contacts made with each by whom, where, when and how, and as to whether each resident had been interviewed, interviews being face to face and productive of a statement.[91] Volume III displayed a master file and sixty-two individual files setting out charges laid as of March 14, 1990 thirteen months after the reopening of the investigation.[92] A chart depicting in graphic form the incidence of contacts and interviews during the thirteen months ending March 14,

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[88] Exhibit C-0437.

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[89] Exhibits C-0349, A,B, and C.

[90] Exhibit C-0349.

[91] Exhibit C-0349A.

[92] Exhibit C-0349C.

1990 was prepared by Mr. Orser and Miss Patricia Devereaux and appears as appendix F[93] in Volume Two of this report. By the end of the period, seventy-nine of the ninety-one residents had been traced by the Constabulary and forty-four statements taken from thirty-eight individuals. The witness warned that by the end of the month of March 1990 there might be dramatic changes in these figures.

A measure of the work done by the Constabulary by March 22, 1990 is to be found in volume III[94] of the exhibit referred to where the criminal charges laid between February 15, 1989 to and including March 14, 1990 were set out as applicable to each person charged, but without revealing his name. Eighty-seven charges had been laid by the police in the reopened Mount Cashel investigation resulting from allegations made in 1975 and since, against fourteen persons of whom nine were Christian Brothers, one was a non-religious volunteer worker at Mount Cashel, one was a minor living at Mount Cashel at the material time, and three were non-religious residents of St. John's. Forty of the charges were for indecent assaults on a male under section 156 of the Criminal Code; twenty-five for gross indecency under section 157; six for indecent assault on a male under section 156; five for assault causing bodily harm under section 245(c); four for sexual assault under section 271(1)(a); three for attempted buggery under sections 155 and 421(b); one charge for touching with a sexual purpose under section 151; one charge for inviting touching for a sexual purpose under section 152, one charge for attempting to commit an indecent assault and one for buggery itself under section 155. Since the conclusion of the public hearings of the commission advice has been received that charges laid as of December 31, 1990 are as follows and the communication from the Constabulary is reproduced:

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[93] Exhibit C-0349B.

[94] Exhibit C-0349C.

> **"As of December 31, 1990 a total of 106 charges have been laid as a result of the reopening of the Mount Cashel Investigation which started on February 15th, 1989. A breakdown of the charges are as follows:**
>
> | | | |
> |---|---|---|
> | **57** | **Indecent Assault on a Male** | **(156 CCC X 52 & 148 CCC X 5)** |
> | **30** | **Acts of Gross Indecency** | **(157 CCC X 29 & 149 CCC X 1)** |
> | **5** | **Assault Causing Bodily Harm** | **(245(2) CCC)** |
> | **5** | **Sexual Assault** | **(271(1)(a) X 1 & 246.1(1)(a) X 4)** |
> | **3** | **Attempted Buggery** | **(155-421(b) CCC)** |
> | **1** | **Buggery** | **(155 CCC)** |
> | **2** | **Touching for a Sexual Purpose** | **(151 CCC X 1 & 140 CCC X 1)** |
> | **2** | **Inviting Touching for a Sexual Purpose** | **(152 CCC X 1 & 141 CCC X 1)** |
> | **1** | **Attempted Indecent Assault on a Male** | **(156-421 CCC)** |
>
> **Eighty-nine (89) of these charges were against Christian Brothers.**

> **Five (5) charges were laid against a resident of Mount Cashel.**
>
> **Twelve (12) charges were laid against civilian residents of St. John's."**

The above figures are given to reflect the activity of the police both as a result of their inquiries under the direction of Superintendent Power and Lieutenant Twyne and of disclosures and contacts made through the commission and investigators Orser and Horne, in a form designed to protect the anonymity of the persons charged and their alleged victims.

Recording Mount Cashel Residents at December 1975

An activity of even wider range culminated in the introduction into evidence of a compilation of information relating to all the residents of Mount Cashel entitled "Young Persons Residing at Mount Cashel Orphanage, December 1975". Provided were forms containing the date and place of birth, age at December 1975, approximate periods of residence in Mount Cashel and probable legal status, as to wardship or by non-ward agreement as the case might be, the date of any 1975 Newfoundland Constabulary interview, and the date and place of any similar interview by commission investigators, where currently residing, the date of testimony before the Royal Commission, exhibit numbers of profiles or statements in 1975, if any, with remarks by investigators Orser and Horne. This important documentation of the ninety-one residents was introduced through Orser on

December 4, 1989.[95] At that point the two investigators had made contact with eighty-six, and, of the remaining five, knew of the approximate whereabouts of three. Social Services files from both headquarters and district offices to the number of eighty-nine, comprising twenty-five thousand sheets of paper, were examined by them, and the department and the police were universally helpful. By and large, Orser found the social services files complete, with the occasional absence of placement reports when wards of the director were moved from one foster-home to another. It should be remembered that Mount Cashel had become an institutionalized foster-home, which by virtue of its evolution from being a private orphanage, had developed a status of its own relieving its administration from some of the requirements imposed upon foster-parents. As time passed during the course of the commission's inquiries information of the kind enumerated, was completed in relation to ninety of the ninety-one residents of December. The result may be seen at appendix G, the identities of those who testified to the commission in a public hearing being set out, and the rest indicated only by a combination of letter or number (e.g. R.12 or Mr. "D").

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[95] Exhibit C-0177.

Chapter V: The Questions in Article I

The Answers

The terms of reference of the inquiry which I was commissioned to conduct "into an investigation by the Royal Newfoundland Constabulary into a complaint or complaints of child abuse" alleged to have been committed at Mount Cashel Orphanage in St. John's which culminated in two police reports prepared and dated December 18, 1975 and March 3, 1976, and the subject of most of the foregoing pages, require in article I thereof answers to nine specific questions and these I now address.

(a) Whether the police investigation was carried out in accordance with accepted police policies?

It will be recalled that the first version of the terms of reference dated March 31, 1989[96] contained the words, "whether the police investigation was carried out in accordance with acceptable police policies *then prevailing*". If there is any significance in the omission of the italicized words it cannot be that the police investigators of 1975 are to be judged by the accepted policies of today, and my conclusion on that point is strengthened by the change from "acceptable police policies" to "accepted police policies". The answer must be partly "yes" and partly "no": "yes" in connection with the actual interviewing done by Detectives Hillier and Pitcher; "no" by the actions of Lawlor and Norman in sending the first report back for the elimination of information about sexual abuse, and Hillier's apparent compliance with this direction, although the effect of that compliance, if any, was much reduced by the attachment of statements which complained explicitly about it. If it was accepted police policy to comply with directions from officers of the Department of Justice as to the laying of charges, it was not so in respect of interruption of a properly constituted investigation and the by-passing of the officer in charge of the C.I.D., Detective Inspector Yetman. A similar finding must be made about the report of March 3, 1976 when Hillier was instructed by Lawlor and Norman to produce a report for the minister also eliminating reference to sexual abuse and ill-treatment. It was not part of accepted police policy as represented by the training, traditions and policy manuals of the Royal Newfoundland Constabulary, then and now, to interfere with a police investigator to the extent of ordering the alteration of his report to suppress allegations of criminal misconduct.

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[96] See Introduction pp. vi - vii.

(b) Whether the police policies were proper and adequate to ensure that the police investigation was thorough and complete.

All the evidence points to the conclusion that the handling of the investigation was contrary to police policies in Newfoundland followed by both the Royal Newfoundland Constabulary and the Royal Canadian Mounted Police. Ordering the officer in charge of the investigation to alter his first report of December 17, 1975 and to edit his report of March 3, 1976, and conclude the investigation in mid-career, was a unique departure from accepted policy and practice. To be sure, Superintendent Power testified to what he considered at the time of the investigation of 1975 to be differing standards as applied to ordinary offenders on the one hand and offenders of consequence on the other, in that prosecutorial discretion might be exerted in favour of the latter, but the policy applicable to police investigations did not authorize and would have condemned their interruption by higher authority, and any attempt to falsify their results. The answer to this question must be "yes".

(c) Whether any person or persons impeded or obstructed any police officer in the investigation of these matters.

There is no direct evidence that any officer or employee of the Department of Justice, from the minister down, gave any instructions to the police at the time material to the investigation in 1975 and 1976, or at any time until January 1977 when the deputy minister, Vincent P. McCarthy, Q.C., advised Chief of Police Browne that there was no need for any further police involvement. Nevertheless Robert Hillier was told, as I find, that there was "dialogue" with the department and that the minister was out of town. I accept his evidence as to this, and I am of the opinion that consultation with either the chief or the assistant chief by McCarthy is probable and may be inferred. In view of the agreement subsequently reached and referred to in paragraph (h) below, and all the evidence surrounding the matter I find that no such consultation took place by anyone with the minister, then Mr. Hickman. From the evidence given on oath by Robert Hillier, Arthur Pike and Chesley Yetman I find that orders emanating from the chief of police and transmitted by the assistant chief of police caused Robert Hillier to cease his investigation before it was completed, to alter his report and to write that of December 18, 1975 and that of March 3, 1976 under direction to exclude all allegations of sexual abuse of children at Mount Cashel. The fact that these orders and directions were not effectively complied with may well have supplied reason for the retention of the reports in the deputy minister's file until January 1977. These orders and directions were doubtless impediments and obstructions to police officers investigating allegations contained in statements appended to the reports; as to whether they constituted the offence of wilfully attempting to obstruct justice is for the law officers of the Crown to determine. It should be borne in mind that John Lawlor transmitted to Vincent McCarthy reports in which Hillier had left abundant allegations of sexual abuse.

(d) Why and at whose direction the police reports dated December 18, 1975 and March 3, 1976 were prepared.

The reports in question were prepared because of a complaint received from Mrs. Carol Earle in respect of alleged injuries to her son Shane, and reports by Mrs. Alice Walters of Social Services and Dr. Paul Patey of the medical faculty of Memorial University as a result of an examination of Shane Earle at the Charles A. Janeway Child Health Centre, both in St. John's. No citizens complaint form has been found and there is no record of the complaint in the occurrence book kept at the material time in the police station on Water Street. The facts are that the text of Hillier's first report (but not the appended statements of complainants) was destroyed by him when ordered to make alterations deleting from it reference to allegations of sexual abuse. Its successor of December 18 was the result of this order. To the extent that it was an edited version of the one destroyed, it was prepared by direction of the chief of police, otherwise by Detective Hillier under compulsion of his interrupted investigation. The report of March 3, 1976 was prepared by Hillier as a result of the same direction, and since he was advised that it was for the use of the Minister of Justice it was in due course addressed to him. Other than this evidence, which I accept, there is none. One can speculate that the report of March 3, which was a supplement only to the report of December 18, was required for ongoing discussions with Brother McHugh and his advisers, and for communication to the minister by the deputy minister if considered necessary at any future time, but no definite answer can be given.

(e) Whether either or both police reports contained sufficient information to cause the Royal Newfoundland Constabulary to swear informations alleging breaches of the Criminal Code against any person or persons.

As indicated above the two reports must be read together because that of December 18, 1975 had appended to it all of the statements of the Mount Cashel boys interviewed by Detectives Hillier and Pitcher upon which further comment was made in the report of March 3, 1976, but which itself contained only the statement of Brenda Lundrigan, the report of Dr. Paul Patey and photographs of injuries to Shane Earle. All those members of the Criminal Investigation Division of the Royal Newfoundland Constabulary and of the Royal Canadian Mounted Police to whom questions on this point were put were of the opinion that the police officers who responded to the complaint of December 7, 1975 and were armed with the statements obtained in the course of the following ten days, had reasonable and probable grounds to swear informations in the course of laying charges for breaches of provisions of the *Criminal Code of Canada* against some Christian Brothers named in the reports. Commission co-counsel share this view with me, but it must be borne in mind that under policies established and accepted by both the "criminal side" of the Department of Justice and the police, this was a case of more than ordinary proportions, and the laying of charges was subject to approval by the prosecutors. A reversal of this policy, as noted earlier in this report, occurred only in early 1989. It is clear that the information contained in each report was such as to ensure that charges would be laid sooner or later as transpired in 1989. The answer must be an unequivocal affirmative.

(f) Whether the police reports were received and acted upon by officials of the Department of Justice and if or *(sic)* **whether the files were handled in the normal manner.**

Assuming that the word "or" should be "so" I must find on all the evidence that the police reports in question were received and acted upon by only one official of the department, he being the deputy minister. This evidence is to the effect that there was no category of confidential files in the department, that the file in question was created by Mr. McCarthy, and because it never reached the file registry in the department at any time when it was active, cannot be considered to have been handled in the normal manner as described by the witness Brenda Chancey. After the appointment of McCarthy to the District Court the evidence indicates that the file, without the police reports, was in place in some filing cabinet on the fifth floor of the Confederation Building, was available for inspection and was seen by Judge Hyslop. Prior to that time I find that it was kept in the deputy minister's office and was not available, and I rely on the testimony of Madam Justice Noonan in this respect. The action taken by the deputy minister, being the only official of the department who took any at all, is referred to again below; but his handling of the file was not normal.

(g) When, how and by whom this file was concluded and which person or persons in the Department of Justice, the Royal Newfoundland Constabulary or elsewhere were responsible for this action.

The file entitled "Mount Cashel re Child Abuse"[97] was "concluded" by a letter from Vincent P. McCarthy, deputy minister, dated January 26, 1977, to Chief of Police John R. Browne, marked "personal and confidential", returning the police reports of December 18, 1975 and March 3, 1976, enclosing copies of letters received from Brother G.G. McHugh and the Reverend Dr. Thomas A. Kane and ending, "in view of the action taken by the Christian Brothers further police action is unwarranted in this matter". Any further action taken involved the removal by Browne of McCarthy's original letter from the file containing the reports. The reports were found and produced to Superintendent Power in 1989 by Sergeant Leonard Clowe in charge of records at headquarters, who testified that the file on Mount Cashel came into records in the 1970's, containing the Hillier reports but without any correspondence. It must accordingly be assumed that Browne destroyed the confidential letter written to him by McCarthy, since the commission's investigators were assured by the chief's widow that he had no such paper at home at the time of his death.

(h) Whether any bargain was made by any person acting on behalf of the Crown or the police with any member or members of the Irish Christian Brothers or any other person not to proceed with criminal charges and, if so, the terms of such bargain.

It must be assumed that the word "bargain" is used in its most comprehensive sense in the terms of reference; the primary current meaning according to the *Oxford English Dictionary* is "an agreement between two parties settling how much each gives and takes or what each performs and receives in a transaction between them; a compact". The evidence given by Brother G.G. McHugh, then Provincial Superior, and at the time of testifying on December 14 and 15, 1989 Superior General of the Congregation of Christian Brothers, was to the effect that after flying to Newfoundland and being apprised by Brother Nash of the police investigation he remained passively in Brother Rice Monastery in St. John's waiting for a summons, and in due course having received a telephone call from a woman advising him of an appointment with the Deputy Minister of Justice, he went to an office in the Confederation Building accompanied by Brother Nash, "because he had been involved with this situation from the beginning". Brother McHugh must speak for himself as to what happened at this meeting as he answered the questions put to him by Mr. Day:

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[97] Exhibit C-0179.

> **"Q. Describe what happened during the meeting.**
>
> **A. We entered and Mr. McCarthy received us graciously. We sat down and after very brief pleasantries about maybe the weather or something of that nature, he proceeded immediately into the purpose of the meeting. He said that you are aware obviously of the investigation that is going on and that a report had been presented to him and the evidence in the report gives indication of sexual abuse, incidents of sexual abuse.**
>
> **Q. By whom?**

A. By the two brothers.

Q. Against whom?

A. Against children at Mount Cashel.

Q. Was that stated by Mr. McCarthy to you?

A. I cannot say whether he stated that specifically, certainly I would have that knowledge.

Q. That was the impression he left?

A. That is correct. He indicated at that time that no charges would be laid at that time and that the report would be placed in the file. That's the substance. Then he said that, he told me to transfer the two brothers from communities in Newfoundland to elsewhere within the Canadian Province."

The rest of his evidence as to this meeting left the impression that the two Christian Brothers acquiesced in the direction given to them, Brother McHugh saying "when that suggestion or direction was made I accepted it I suppose as probably part of normal procedure in dealing with situations such as this ...". They then left the meeting, McHugh advising the deputy minister of the treatment facilities available to the implicated Brothers and feeling that the decision to lay charges was held in abeyance, although leaving his auditors at the subsequent meeting with officials of the Department of Social Services with the impression that no charges would be laid. Before leaving the transcript of the evidence I should reproduce the questions I asked of the Superior General and the answers which he gave at the end of his testimony:

> **"The Commissioner:**
>
> **Brother McHugh, I had some questions I was going to ask you mainly about the rather graphic phrase you used when you said you waited in the monastery for the other shoe to drop. Now the impression I have is that you went to St. John's after being advised by Brother Nash and did not pursue the question which was giving you great anxiety but waited to be advised by someone as to what was going to happen. Is that the case, and were you waiting to be advised by Mr. McCarthy for instance?**
>
> **A. I was waiting for a development, and I could not tell what the next step would have been. I certainly felt that since the situation was in the hands of the police there was nothing I could do.**
>
> **Q. The impression that must arise from that is that someone other than you was busily canvassing the situation perhaps on behalf of the Congregation. Have you any knowledge of that?**
>
> **A. I have no knowledge whatsoever."**

As previously remarked the head of the Constabulary, by then J.R. Browne, was not advised about charges until January 1977, and after Mr. McCarthy had perused the letters from the treatment centres to which the two suspects first removed from Mount Cashel had been sent, and upon receipt of which he wrote "in view of the action taken by the Christian Brothers further police action is unwarranted". The transaction from McCarthy's point of view was, I infer, to have Brother English and Ralph moved from the province. There could be little doubt of the sufficiency of the evidence and prosecutorial discretion exercised in their favour, openly and at the time, would have been a clear travesty of justice. It was in the power of the Provincial Superior to assign them to other duties in the religious province outside Newfoundland, and to do it naturally and at once. Therefore there was agreement as to the terms of the transaction: their removal on the one hand, and the suspension of charges on the other, with the liklihood of them ever being imposed remote once the two had left the jurisdiction. No doubt Brother McHugh assured McCarthy that they would be compelled to submit to treatment as his letter of January 26, 1976 indicates, but it is unlikely that these assurances were required. In the sense that an agreement as to the terms of the transaction was reached there was a bargain made between the Deputy Minister of Justice and Deputy Attorney General of Newfoundland and the Superior of the Canadian Province of the Congregation of Christian Brothers and such were its terms.

(i) Whether any report of child abuse was made to a Social Worker, the Director of Child Welfare or any other official of the Department of Social Services by any person in accordance with the requirements of the *Child Welfare Act*, and if not, why not; if so, was it acted upon?

The first report of child abuse in connection with the investigation of December 1975 was made by Chesley Riche directly and in person to Director of Child Welfare, F.J. Simms, and, on investigation by the district office of the department at his direction, by Mrs. Carol Earle to Mrs. Alice Walters and Robert Bradbury employed as social workers in that office at Harvey Road. There was an exchange of information between Mrs. Walters and Detective Hillier at least, but the contents of the two police reports in question were not made available to the director when Mrs. Mary Noonan was denied access to them by the deputy minister, an action inconsistent with the normal practice. Additional action taken by the director was to discuss his knowledge of the matter with Brother Nash; no social worker was instructed to make inquiries at the orphanage. In his evidence before the commission Mr. Simms somewhat hesitantly expressed the view that his division was deprived of the power to investigate the condition of his wards at Mount Cashel by the opening of a police investigation. The investigation ended soon enough in all conscience, and the last word heard by the heads of the department [again not the minister] was from the lips of Brother McHugh when he announced the satisfactory termination of the Mount Cashel affair and a new direction and purpose for the institution.

It will be recalled that section 49 of the *Child Welfare Act, 1972* as it stood in 1975 was discussed in chapter II at page 56 and was there set out. Mr. Riche and Mrs. Earle did not fail in the duty to report a complaint of child abuse to the director, but it is clearly arguable that no report was made to him by officers of the Constabulary from those concerned with the investigation up to the chief of police himself, and Mr. Vincent McCarthy, perhaps unwittingly but nevertheless decisively, defied the provisions of section 49 by refusing to give Mrs. Noonan any information at all except that he had dealt with the complaint. Equality before the law applies to duties as well as rights and no one was exempt from the duty to report a complaint of child abuse to the Director of Child Welfare as required by section 49.[98]

* * *

A Way of Life

Mount Cashel under the stewardship of the Christian Brothers is no more. Its demise must to a large extent be attributed to the events described, but it is proper to reflect upon the work there undertaken over ninety-two years and its effect on the life of the community. As an educational institution its reputation was high as befitted the function of an order highly regarded in that field; as a refuge for homeless boys of the Roman Catholic faith it stood alone and in that capacity it must alone be judged from the point of view of social welfare. Many witnesses testified about the debt they owed to it in both characters, and as described above on every commemorative occasion the order was warmly supported by the Government of Newfoundland and Labrador and the people of St. John's. But there was a dark side to the ministrations of the Christian Brothers not peculiar to Mount Cashel. They had a reputation as harsh disciplinarians as well as gifted teachers, and it seems to have been taken for granted in any community in which they served that this was so. I do not mean to suggest that what they did in this province by way of discipline and correction was in any way as extreme as what is reported as having been inflicted by them in Western Australia in the years subsequent to the last World War.[99] The commission was told by Mr. H.V. Hollett, deputy minister in the Department of Social Services from December 1972 to August 1980, who testified on February 26 and 27, 1990, that "physical abuse was part of the way of life of the Christian Brothers". In the course of evidence given on December 8, 1989, Mr. Raymond Joseph Fahey, formerly a Crown prosecutor and in 1969 and 1970, a teacher at Brother Rice and St. Patrick's High Schools, said that he had reason to lodge a complaint about a strapping by the principal of the latter who was a Christian Brother. The offender was a smallish grade nine boy, the offence was trivial and the principal delivered the punishment with great force - his feet leaving the floor - and red-faced with anger. Mr. Fahey told him that he would report the matter to the Roman Catholic School Board and he did with the result that this member of the order did not return the following year, having acquired his position as principal simply because the Christian Brothers would not serve under a layman in that office. This evidence was given in the course of the witness being asked whether he knew of any Mount Cashel investigation, and he said that because of his experience with the Christian Brothers at that time any such report would have made an indelible impression upon him. Mr. Fahey was quick to say that he knew members of the order whom he admired and liked but there was an element, of which the teacher in question was an example, which repelled him.

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[98] Section 49 of the *Child Welfare Act, 1972* is further discussed in its amended form in chapter VIII at pp. 377 - 381.

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[99] "*Lost Children of the Empire*": Bean, Philip & Melville, Joy. Unwin Hyman Limited, London, 1989.

This is an account of the export of orphans and other children under the auspicies of various enterprises of which Dr. Barnardo's Homes was typical. In the case of the Christian Brothers such of their foundations as Clontarf are alleged to have been built by the unrequited labour of the immigrant children in their care. Serious cases of physical and sexual abuse are cited.

John Joseph Penney testified on June 13, 1990 about his experience as a victim of savage sodomizing by a lay employee at Mount Cashel, a state of affairs drawn to the attention of Archbishop Skinner's secretary in 1954[100] as a result of the misgivings of an R.C.M. Police constable about a complaint of indecent assault on a boy at the orphanage. The boy was evidently Penney who on two occasions gave depositions to Mr. Day and Mr. Horne combined into one very moving document[101] of his life as a resident of the orphanage from 1951 to 1959. I quote the following brief extract:

> **"Q. You spoke earlier about 200 or more boys being at Mount Cashel at that time. Of that number of boys, from your general overview of what was going on, how many would be in this circle of homosexual activity?**
>
> **A. Maybe 5, 6, 7, or 8 maybe. It's hard to tell. I certainly didn't go around and count heads and I, thanks be to God that nobody to my mind, to my knowledge, went so far as to go down to the younger classes. It was strictly amongst peers. For the 200 or so boys there are eleven people in there who had charge of us. They were hard men in that organization. I could accept a Brother's firmness. Most of them weren't over-cruel. Firmness, you know, when your dealing with 200 boys or plus, I forget exactly how**

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[100] Exhibit C-0535.

[101] Exhibit C-0536.

> **many, you had to be a little firm. You were outnumbered 20 to 1 or something on that scale. There is no doubt about it. There had to be discipline and firmness. I accept that. But the cruelty from a couple of Brothers, you know, it still stays with me, and like I say, some of it happened to me and some of it happened to other people, and that's the only reason why I came forward to make sure, if at all possible, to make sure it doesn't happen again."**

Again former Christian Brother and Mount Cashel superintendent John Francis Barron told the commission that before he took charge, and while living there under the superintendency of Brother Murray between 1965 and 1968 he one day discovered, crying in a corner, a boy who complained of a Brother "touching" him. Barron took him to Murray and the offending Brother was on an aircraft that night for treatment in Ontario. Not surprisingly, no charges were laid, and there is no record of any report to the child welfare authorities, but Barron said that Murray showed exceptional sympathy with the victim and comforted him.

I am aware of the distinctions that have been drawn throughout the commission's inquiry between physical and sexual abuse of children, and there is no doubt that there is also a link and that sadism is historically a sexual aberration. The allegations by men who were formerly children under the control of the Christian Brothers in Mount Cashel, if true, indicate conduct not only not confined to isolated instances of child abuse but the existence of a morbid condition of many years standing.

Chapter VI: Child Welfare

Mandate and Method

Article II of the terms of reference required the commission to "inquire into the then prevailing policy or practices of the Department of Justice and the Department of Social Services with respect to allegations of physical or sexual abuse of children" and then to make findings under three heads:

> **"(a) whether there was a policy or practice of suppression of such allegations where the alleged assailants agreed to leave the Province of Newfoundland, and, if so, whether such related solely to the incidents at Mount Cashel and, if not, for how long that policy continued and to what extent was it applied;**
>
> **(b) if such a policy or practice existed, whether it was applicable to areas of the Administration of Justice other than incidents of physical or sexual abuse of children;**
>
> **(c) whether such a policy or practice was justified or appropriate."**

As to the language used I am of the view, with some lexicographical justification, that "policy" means a general plan or course of action to be adopted in this case by the departments named, either acting independently or in compliance with a government plan or course of action, and "practice" in the sense of habitual action means very much the same thing. A refined distinction may be drawn between the theoretical element of policy as exemplified by its stated aim and its practical application. As to paragraph (b) it is recognized that the administration of justice is not only confined to the activities of the department most closely associated with it, but in its concern with the enforcement of the enacted law is a function of government as a whole. In approaching the task of complying with the requirements of paragraph (c) care must be, and I think has been taken not to trench upon the jurisdiction of the courts to the extent of inviting consideration of what is found to be unjustified or inappropriate as a criminal offence or tort.

In construing the commission's mandate it was decided that the provisions of article I, paragraph (i) as to the obligation to report incidents of child abuse to the department of social services under the provisions of the *Child Welfare Act, 1972* were relevant to any inquiry into the policy and practice of that department. Furthermore anything calculated to measure the response of the administration of justice to complaints was judged to be material. An inquiry into "then prevailing" policy or practices necessarily involved an examination of their application subsequent to the period of the 1975 Mount Cashel investigation in order to judge how long they prevailed and to what extent they were modified at a later time.

A searching examination of the files of the department of social services at headquarters, regional and district offices in St. John's and in other parts of the province where considered necessary by commission counsel and investigators was combined with the testimony unstintingly given to the commission of ministers, deputy ministers, and assistant deputy ministers with particular emphasis on the work of the child welfare division from the director down to front line social workers, to whom the problem of child abuse had caused concern over the fifteen-year period because of its gradual assumption of menacing proportions. Similar inquiries providing a similar response were addressed to former heads, deputy heads and officers of the department of justice. In line with the stated principle that all the evidence given to and gathered by the commission would apply to any part of its mandate, all of what was furnished for the purposes of article I of the terms of reference is applicable where relevant to what is now to be addressed in response to the provisions of articles II and III.

David C. Day, Q.C. and Clay M. Powell, Q.C. co-counsel to the commission, have, in line with their opening addresses classified the narrative evidence called as falling within two phases, phase one comprising complaints of child abuse alleged to have occurred at Mount Cashel Boys' Home and Training School, particularly at the time of the December 1975 police investigation and subsequent thereto for a reasonable period, and complaints of child abuse in Newfoundland and Labrador other than those alleged to have occurred at Mount Cashel as phase two. The presentation of the latter, the burden of which fell mainly on Mr. Day, assisted by Mr. Powell and Miss Sandra Burke, assistant counsel to the commission, commenced on April 5, 1990 at which time he pointed out that phase two evidence would not only provide the basis for answering the questions posed in article II of the terms of reference but provide as well the means whereby the commission could answer the important question posed in article III which reads as follows:

> **"Whether existing Police and Government Departmental policies are sufficient and proper to prevent avoidance of the due process of law in**

> **instances of allegations of physical or sexual abuse of children."**

In the course of his statement Mr. Day succinctly described the documentary sources examined and where they were normally located:[102]

> **"3. Potential Exhibits Examined**
>
> **(a) Sources Examined: Generally**
>
> **The matters to be examined in Phase 2 evidence originated with files of Department of Justice and Department of Social Services, Government of Newfoundland and Labrador.**
>
> **Commission Investigators and Co-Counsel examined both concluded and current files generated by each of the Departments.**
>
> **Department of Justice records examined were files and Departmental index references to files opened in response to allegations of child abuse.**
>
> **A like examination was made of Department of Social Services files and file indexes.**
>
> **Included in the examination were all files and file index references, both concluded and current, relating to allegations of child abuse that were opened in the Department of Justice or in the Department of Social Services, at St. John's, from 01 January 1970 to 31 January 1990.**

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[102] Exhibit C-0406A.

The examination of these files and file index references was undertaken by Weldon H. Orser and G. Fred Horne, Commission Investigators; Herbert A. Vivian, Executive Secretary; Sandra M. Burke, Legal Assistant; Patricia Devereaux, Margaret Linehan, Virginia Connors, Secretaries, and Commission Co-Counsel.

The locations of the Departmental files and file index references that were examined are as follows:

(b) Locations Examined: Department of Justice.

Concluded files - consisting of criminal, judicial (i.e., judicial matters other than criminal) and civil (i.e., other than criminal and judicial) - are in archives (that is, permanent storage) at S. Burnham Gill Records Management Centre, the Newfoundland and Labrador Government's records storage centre, St. John's, or they are in temporary storage at Mount Scio House, St. John's (also the St. John's Crown Attorneys Office), awaiting transfer to archives.

Current files are at the registry, Department of Justice, Confederation Building, St. John's and at Regional Offices of the Department at Harbour Grace, Clarenville, Gander, and Corner Brook.

(c) Locations Examined: Department of Social Services.

Concluded files relating to child welfare are in archives at the Department of Social Services,

> **Confederation Building, St. John's and at St. John's Centre District Office, Harvey Road. Concluded District Office files are stored in the respective District Offices. Current Departmental files are at the registry of the Department at Confederation Building and current District files are at the registry, filing room or filing area in each of the District Offices.**
>
> **(d) Locations Examined: Other**
>
> **The examination of these files rendered necessary scrutiny, by Commission investigators and Commission Co-Counsel, of:**
>
> **(a) files of Royal Newfoundland Constabulary at St. John's and Labrador City,**
>
> **(b) files of Royal Canadian Mounted Police,**
>
> **(c) medical records (particularly, though not exclusively, records of Dr. Charles A. Janeway Child Health Centre),**
>
> **(d) school counsellor files,**
>
> **and**
>
> **(e) files of the Supreme Court and of the Provincial Court of Newfoundland."**

The result of these investigations which proceeded day and night during the course of phase one evidence, and for weeks before the beginning of presentation on April 5, was the compilation of thirty-seven "child welfare profiles" and could have resulted in twice that many had time and human resources permitted. Each of these profiles consisted of documentary material to illustrate the investigating of allegations of child abuse. Of these Mr. Day had this to say:[103]

> **"Most documentary evidence in Phase 2 will be presented in bound volumes entitled "Profiles". There are three types of Profiles.**
>
> **The first type is a Child Welfare Profile, four of which were received in Phase 1 evidence: Exhibits: C-0281, C-0288, C-0294, C-0358.**
>
> **The second type is a Criminal Investigation Profile; three of which were received in Phase 1 evidence: Exhibits C-0335, C-0336, C-0337.**
>
> **The third type is a Child Welfare/Criminal Investigation Profile; the first of which involves the family mentioned above.**
>
> **The title of a Profile depends of whether the state response to a complaint alleging child abuse consisted of: a child welfare investigation (with or without a "wardship" application); a criminal investigation (with or without the "laying" and prosecution of criminal charges); or both."**

A list of these profiles as categorized under "Child Welfare", "Criminal Investigation" and "Child Welfare and Criminal Investigation" is as follows:[104] the initials in brackets identify counsel presenting the profiles and leading the *viva voce* evidence which accompanied and explained it and the commission's exhibit number; each profile was accompanied by a prefatory note offering a general explanation of the documents within.

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[103] Exhibit C-0460A.

[104] Exhibit C-0531.

"**CHILD WELFARE:**

No.01: The Shane Earle Wardship Proceeding, St. John's, 1976 [Exhibits C-0281, 281A, 281B] (DCD)

No.02: The Francis Strickland Baird Proceeding, St. John's, 1976 [Exhibits C-0288, 288A, 288B] (DCD)

No.03: Complaints from Mount Cashel Residents, St. John's, 1982 [Exhibits C-0294, 294B, 294C, 294D] (DCD)

No.04: Alonzo Corcoran, Marystown-Whitbourne [Exhibits C-0358, 358A] (CMP)

No.05: Temporary-Permanent Wardship Proceedings Gander, St. John's, 1972 to 1978 [Exhibit C-0422] (DCD)

No.06: Foster Home Care, Mount Pearl, 1965 to 1975 [Exhibit C-0447] (DCD)

No.07: Guardianship Proceedings: Punctuality, 1980 to 1982 [Exhibit C-0471] (DCD)

No.08: 1980 - 1981 [Exhibit C-0457] (SMB)

No.09: 1972 - 1989 [Exhibits C-0458, 458A, 458B] (SMB)

No.10: 1976 - 1989 [Exhibit C-0459] (SMB)

No.11: Guardianship Proceedings, Reciting the Facts 1979 [Exhibit C-0469] (DCD)

No.12: Guardianship and Adoption Proceedings, 1979 - 1985 [Exhibit C-0470] (DCD)

No.13: Institutional Foster Care - Waterford Hospital - Girls Home and Training School [Exhibit C-0499] (DCD)

No.14: Group Home Complaint Regarding Two School Teachers; 1989 to 1990 [Exhibit C-0532] (DCD)

No.15: Foster Home Care For Handicapped Children, 1971 - 1988 [Exhibit C-0628] (DCD)

CRIMINAL INVESTIGATION:

No.01: Royal Newfoundland Constabulary, St. John's, 1989 [Exhibit C-0335] (DCD)

No.02: Royal Newfoundland Constabulary, St. John's, 1990 [Exhibit C-0336] (DCD)

No.03: Regina versus Ronald Hubert Kelly, Corner Brook, 1979 [Exhibit C-0337] (DCD)

No.04: 1985 to 1986 [Exhibit C-0524] (CMP)

CHILD WELFARE and CRIMINAL INVESTIGATION:

No.01: 1985 to 1989 [Exhibit C-0423] (SMB)

Chapter VI

No.02: Rural Community, 1972 to 1973; Rural Community and St. John's, 1982 to 1984 [Exhibits C-0449, 449A, 449B] (DCD)

No.03: St. John's, 1976 to 1982 [Exhibit C-0455] (DCD)

No.04: 1978 - 1983 [Exhibit C-0460] (SMB)

No.05: 1980 - 1984 [Exhibit C-0461] (SMB)

No.06: 1974 - 1979 [Exhibit C-0462] (SMB)

No.07: 1976 - 1977 [Exhibit C-0631] (CMP)

No.08: 1980 - 1983 [Exhibit C-0632] (CMP)

No.09: 1980 - 1981 [Exhibit C-0463] (SMB)

No.10: 1980 - 1982 [Exhibit C-0464] (SMB)

No.11: 1980 - 1985 [Exhibit C-0465] (SMB)

No.12: Improper Placement of Child For Parenting, 1981 to 1982 [Exhibit C-0472] (DCD)

No.13: 1986 to 1990 [Exhibits C-0474, 474A] (CMP)

No.14: 1973 to 1974 [Exhibit C-0482] (DCD)

No.15: 1974 [Exhibit C-0484] (DCD)

No.16: Adoption and Guardianship Proceedings, 1979 to 1981 [Exhibit C-0485] (DCD)

No.17: Institutional Foster Care - Exon House, 1971 to 1988 [Exhibits C-0496, 496A] (DCD)

No.18: Guardianship and Parenting Proceedings, 1976 to 1978 [Exhibit C-0497] (DCD)

No.19: 1974 to 1990 [Exhibit C-0502] (DCD)"

Child abuse is now classified under three heads; physical, emotional and sexual. In general these three categories have been observed and understood since early times, but certain aspects have not and much research has been undertaken and information disseminated in comparatively recent years. In particular the "battered child syndrome"[105] in the category of physical abuse has been revealed to the medical profession, and with growing clarity, to the public over the course of only thirty years. Sexual abuse, and all its repellant manifestations, has always been with us and in some societies is simply taken for granted. Emotional abuse is common knowledge but its effects are still only emerging from the shadows, and in any event is not referred to in the commission's terms of reference.

In two of the child welfare profiles prepared by the commission the battered child syndrome was discussed by Dr. Teodoro Rosales, consultant paediatrician and clinical geneticist at the James Paton Memorial Hospital, Gander, in connection with Child Welfare Profile No. 5, and by Dr. Charles Hutton, chief forensic pathologist for the province and a member of the medical faculty of Memorial University with Child Welfare and Criminal Investigation Profile No. 2. It is briefly described in the opening paragraph of the seminal article by Dr. C. Henry Kempe and his associates in the *Journal*

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[105] "Syndrome" in this case means "a combination of symptoms."

of the American Medical Association of July 7, 1962:[106]

> **"The Battered Child Syndrome is a term used by us to characterize a clinical condition in young children who have received serious physical abuse, generally from a parent or foster parent. The condition has also been described as "unrecognized trauma" by radiologists, orthopedists, pediatricans, and social service workers. It is a significant cause of childhood disability and death. Unfortunately, it is frequently not recognized or, if diagnosed, is inadequately handled by the physician because of hesitation to bring the case to the attention of the proper authorities."**

Professional and public awareness slowly made their way in the course of the next decade but, as will be seen, a sufferer would be fortunate to have had in the year 1972 as perceptive a diagnostician as Dr. Rosales. By saying this I do not mean to disparage Dr. Hutton whose services as a pathologist would have been provided *post mortem*. By 1973 the Director of Child Welfare and Corrections was able to issue as circular no. 29 of that year[107] an apparently authoritative paper setting out typical symptoms of child abuse and recognizable reactions on the part of the abusers. After noting the substantial increase in the number of cases reported he said, "it is not believed that this is indicative of an increase in the incidents *(sic)* of child abuse but rather an increased emphasis on detecting and reporting such cases by doctors, nurses, teachers, welfare officers, and other interested citizens." There is no word about sexual abuse, and the circular no doubt reflects revelations in two cases of physical abuse which are the subject of profiles referred to above. As to sexual abuse enlightenment was to be offered in 1975, but to averted eyes.

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[106] Exhibit C-0417.

[107] Exhibit C-0043.

Administration

I have already referred to the legislative framework provided for the department of social services and the peculiar position, which never seems to have been asserted, of the director of child welfare provided, and not for the first time by the *Child Welfare Act, 1972*. I shall now examine some of the administrative tools which were used during the past two decades. The first and most important was the department's policy manual, chapter two of which was devoted to child welfare and was available to all members of the division and particularly recommended by the director to "field staff".[108] When H.V. Hollett, deputy minister from December 1972 to August 1980 testified to the commission he said that his department had the best policy manual in the government. The section dealing with child welfare must be accorded special importance since regulations under the *Child Welfare Act, 1972* were almost entirely devoted to licensing of foster-homes, and the scale of expenditures permitted for the care of foster-children. Chapter two of the manual was devoted to child welfare and was extensively revised in June 1974. As it then stood with the revisions to the end of 1975 it was entered in evidence[109] in September 1989, and in April 1990, a new "Child Welfare Policy Manual" dated October 5, 1989 and published by the director replaced chapter two of the "Manual of Policy and Procedures" and was offered in evidence to the commission on April 5, 1990, after substantial editing by Mr. Day and the commission staff which was adopted by the division.[110] The circulation of information on child abuse in 1973 by the director referred to above is contained in the 1974 revision, as section 227, and the battered child syndrome is explained. It is clear from this section that child abuse at the time meant the physical abuse of children but, as will be seen, in another aspect of the administration the categories of sexual and emotional abuse were well understood. Instructions were apt to be copious but not always effectively drafted. By a revision of November 1977[111] section 227.7 is introduced as follows:

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[108] Exhibit C-0047.

[109] Ibid.

> **"The Division of Child Welfare is legally obligated to report all cases of serious child abuse to the Department of Justice; however, in most cases there is considerable consultation between the two departments before any action is taken regarding criminal prosecution, etc. To facilitate the handling of cases involving serious child abuse the Social Worker is now required to report all such cases directly to the Police in writing immediately with copies to the Director and the Regional Director. This procedure should be less time consuming and should allow for a more co-ordinated approach by the two agencies. A similar policy statement has been provided to the police by the Dept. of Justice. Included in this policy is an instruction to the police to report all referrals of**

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[110] Exhibit C-0414.

[111] Exhibit C-0446, p.7.

> **alleged child neglect and abuse to the Social Worker responsible for the area."**

In a subsequent revision this section was replaced by the following, where the word "serious" has been underlined:[112]

> **"The Division of Child Welfare is legally obligated to report cases of serious child abuse to the Department of Justice; however, in most cases there is considerable consultation between the two departments before any action is taken regarding criminal prosecution, etc. To facilitate the handling of cases involving serious child abuse the Social Worker is now required to report such cases directly to the Police in writing immediately with copies to the Director and the Regional Director. This procedure should be less time consuming and should allow for a more co-ordinated approach by the two agencies. In serious cases of abuse where the Police are to be advised, Social Workers are required to advise the parents of the child of such action. Where the child is a patient at the Janeway Child Health Centre or is likely to be a patient there, the Social Worker is also required to inform the Child Protection Team of that hospital regarding the involvement of the Police. A similar policy statement has been provided to the Police by the Department of Justice. Included in this policy is an instruction to the police to report all referrals of alleged child neglect and abuse to the Social Worker responsible for the area."**

One observes that this revision of February 1979 inserts the words "in serious cases of abuse" so that in the same paragraph the social worker is confronted with "cases of serious child abuse" and "serious cases of abuse", thus adding to the difficulty of deciding what is serious and what is not, particularly before a medical opinion can be obtained. Words like "serious" and "reasonable" are to be avoided in drafting instructions unless one is prepared to accept confusion arising from individual interpretation of imprecise language. *A fortiori* the same must be said of the meaningless "etc". Certainly the department of social services was getting no help from that of justice in drafting these instructions; what the police received from that department is not in evidence, but one hopes that it was not left to the individual officer to decide without further guidance what was to be considered serious, and therefore requiring a report, and what was not. As to precision or style of drafting in the policy manual of 1989 little comfort can be derived from the opening statement in section 220 - child in need of protection - under number 221 which reads as follows:[113]

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[112] Ibid, p.16.

> **"221 Purposes**
>
> **The Department of Social Services has the legal mandate to intervene in situations where children may be in need of protection as defined in Section 2(a.1) of the Child Welfare Act. The paramount consideration in a determination under this Act is the best interests of the child as per (Section 2.1(1)."**

It is not the department of social services but the director of child welfare who has the "legal mandate" under part II of the act, properly cited as the *Child Welfare Act, 1972*; "as per

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[113] Exhibit C-0414, p.17.

(Section 2.1(1)" would make any draftsman shudder, missing bracket and all.

Recommendation 1:

> **Policy manuals and directives should be drafted in precise language, avoiding the use of terms which do not give clear direction to field staff in departments doing work such as is undertaken by that of Social Services avoiding the use of expressions such as "etc", "serious", and "reasonable".**

Proof of the child welfare division's awareness of the significance of sexual and emotional abuse of children may be found in the case of the "child abuse registry" widely referred to as such, although for the sake of accuracy the word "register" should be used. The documents prepared by the staff of the commission refer to it as "the Central Recording System of Child Abuse" a name which presumably has no official currency. In any event it was a record started informally by Sheila Devine and Neil Hamilton in 1973 originally on cards, then in a series of books and again on cards becoming more sophisticated as to classification as the years passed. It was recognized as the responsibility of the assistant director of child welfare and the provincial coordinator of child protection services to preserve it and keep it confidential, but was only used for statistical purposes and its ultimate purpose is still under consideration. The *Report of the Committee on Sexual Offences Against Children and Youths* appointed by the Minister of Justice and the Minister of National Health and Welfare of Canada - known for convenience and in recognition of its chairman as the Badgley report - has this observation at page 567.[114]

> **"Child Abuse Registers**
>
> **The central child abuse registers are files containing vital information concerning child abuse cases occurring within a given province. Registers, or analogous record-keeping systems, are authorized by the child welfare legislation of eight provinces: Newfoundland, *(sic)* Nova Scotia, Quebec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia. Rather than legislating the establishment of a single, central register, Prince Edward Island's Family and Child Services Act, S.P.E.I. 1981, c.12 s.45(2)-(3) requires individual care-providing facilities to maintain registers containing the case histories of children receiving services, recorded in a manner specified by regulation. Child welfare legislation in New Brunswick, the Yukon and the Northwest Territories contains no provisions for establishing registers."**

Unfortunately Newfoundland has no authorization in its child welfare legislation for such a register and consequently the division has no funds for the employment of a computer as a more convenient way of storing the information received in increasing volume from year to year. Mrs. Catherine Whitten, the present co-ordinator, testified to the commission on May 24, 1990 and said that the functions listed on page 568 of the Badgley report reproduced in the commission's document[115] as providing information for research, monitoring the management of cases, assessing the potential risk of child abuse, and "checking" that new cases have no outstanding court orders against them, were not applicable to the register in her custody and it is regrettable that this important record is not deployed for these purposes.[116]

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[114] Exhibit C-0446, p.51.

Two forms in constant use by the child welfare division in recording movements of children in care and how they were getting on in their foster-homes were and are the "child placement report" and the "child progress report". The former, somewhat misleadingly, was completed and filed not only for placement in a foster-home but for every movement back and forth, and in the case of admissions to a hospital and discharge therefrom, and of course transfers from one foster-home to another. In the latter case the foster-parents were required to report on the progress of their foster-children every six months to a social worker who completed the form. A significant exception to this rule was made in the case of Mount Cashel where progress reports were not required - perhaps "expected" is the right word - to be completed until the child in care was about to leave, although in 1978 Neil Hamilton and Brother Bucher reached agreement on a form specially designed for the Mount Cashel ward. The policy manual required "social histories" to be completed for every child taken into care. This was a document which the Christian Brothers insisted on being supplied with before a placement was made at Mount Cashel. All documentation for wards of the director placed at Mount Cashel went direct to him in the period under review.[117]

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[115] Ibid, p.52.

[116] I am advised by counsel (David C. Day, Q.C.) that the child welfare division of the department of social services is at present seeking legislative sanction for the register.

Under section 630 of the policy manual headed "Office Records and Procedure", as notified in revision no. 208 of February 1975, the following appears:[118]

> **"635 Retention and Disposal of Records**
>
> **.1 Retention Period**
>
> **The retention periods for records in field offices are given in Appendix C. Records should be destroyed as soon as possible after the expiry of the retention period. It is suggested that a schedule for the "weeding" of case files and the destruction of other records be set up in each welfare office with the object of doing the job on a continuing basis rather than as a special project. A record should be kept of what is destroyed each month. This should include the file number when the complete file is destroyed and the starting and ending numbers when a group of files are "weeded".**
>
> **.2 Method of Destruction**
>
> **The Social Worker will be responsible for ensuring that records are burnt, shredded or otherwise destroyed to prevent their falling into the hands of unauthorized persons."**

George Pope said in his evidence that this direction from the field services section of the policy manual was still in force unamended when he retired in 1988. The retention periods for records in field offices, as set out in its appendix C, indicate that in most cases the maximum period of retention is the life of the file plus three years. An exception is made in the case of index cards which are to be kept "indefinitely", although the appendix does not indicate their use. The forms appearing under the subheading "Child Welfare" are "affiliation agreement", "application for admission to care" and "application for child". All of these have a life of file plus three year deadline for destruction. Of the two vital forms - child progress report and social history - referred to above there is no mention except as to the child placement report which in note five to appendix C attracts the following observation: "Keep the latest report. Others may be destroyed."

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[117] Exhibit C-0445.

[118] Exhibit C-0306.

To be sure these are instructions for field offices, may not apply to district and regional offices and almost certainly do not apply to departmental headquarters. Nevertheless I had the impression that much was left in these areas to the discretion of the individual executive. If the instruction as to child placement reports is one of general application there is some danger of losing vital documents which in a given case may serve to reconstruct the administrative process when it is most needed for historical or investigative purposes. For instance H.V. Hollett expressed the opinion that social histories of children taken into care were fundamental, and should not be destroyed.

It is therefore recommended:

Recommendation 2:

> **That existing policy dealing with the destruction of files in the Department of Social Services be reviewed to ensure that the social history of children taken into care, child progress reports and child placement reports, be preserved indefinitely for investigative and historical purposes on a confidential basis in the custody of the Director of Child Welfare subject to such confidentiality and exemption from the application of the *Freedom of Information Act* as the minister may deem proper acting on the director's advice.**

* * *

Mount Pearl: A Decade of Foster Care

In the summer of 1964 Dereck O'Brien briefly became the head of a family consisting of himself and two younger brothers. At this time he was still four years old and did not become five until October. His parents simply walked out of their lodgings in St. John's leaving the three little boys with a comatose grandfather who spent his time in a back room surrounded by bottles. Dereck discharged his first responsibility by begging food from neighbours and was soon mercifully apprehended by agents of the director of child welfare together with his brother Ronald, one year younger, and his brother Roy, then only seventeen months old. They were taken to a foster-home on the south side of St. John's where they stayed for almost a year during which time the St. John's Family Court made an order of temporary custody in favour of the director of child welfare which was renewed until finally culminating in orders of permanent wardship. The boys were then transferred to a foster-home on Norma's Avenue in Mount Pearl on June 23, 1965 as a result of an application by a husband and wife who owned a bungalow there for status as foster-parents so that they could provide companionship for their adopted son and the prospective foster-mother could comply with a doctor's opinion that she needed to have children to look after. The adopted son was in fact their grandson whose mother, their daughter, also lived in the house and was employed. I have already referred to the evidence of Dereck O'Brien in connection with his visit to Harvey Road with Brenda Lundrigan and Johnny Williams in 1974. He gave separate evidence on September 26, 27 and 28, 1989 as to his experience as a foster-child and ward of the director and particularly in the house at Mount Pearl where the O'Brien boys spent four and a half years in the case of Dereck and Ronnie and longer in the case of Roy. Their father had seen Dereck once on the railway tracks when the boys were on Southside Road on what must have been Dereck's fifth birthday. After that he did not see his father until 1976. Referring to Norma's Avenue in Mount Pearl, Mr. Day asked:

> **"Q. In general terms, would you describe what life was like in that foster home? In general terms first.**
>
> **A. It wasn't good at all. I have got no good memories at all."**

There then ensued evidence which it is safe to say electrified Newfoundland and profoundly disturbed those who observed it in other parts of Canada. Those who listened in the almost palpable stillness of the hearing saw a young man describe treatment so cold and inhuman as to call into question the sanity of the foster-mother who administered it and of the foster-father who abetted her when he was home from work. In the course of telling the commission how he and his brother Ronnie and two other children lived in the basement in all weathers, were allowed upstairs in the house to eat meals of scraps standing up at a table or if there was any infraction of discipline from a plate without utensils on the basement stairs, called by the names of dogs - Fido and Bowser and so forth - and insensately beaten for little reason and sometimes no reason at all, the witness speaking in a low and muffled voice frequently broke down altogether. The effect of Mr. Day's examination, gentle but insistent, was to heighten the tension of the audience physically present, as well as those surveying the scene from the remotest parts of the country. I quote a sample of this terrible testimony.

> **"Mr. Day:**
>
> **Did you ever receive any explanation from your foster-mother about why you were treated as you are describing to us this afternoon? Did you ever get any sense of anything she said as to how she felt about you?**
>
> **The Witness:**
>
> **She didn't care. She told us that we were kids that nobody cared about, and the government was paying -- I don't know if she used the word government, but that somebody was paying her to care for a couple of kids that nobody wanted.**

Q. That nobody wanted?

A. That's right.

Q. Do you recall a specific occasion involving a problem which your brother Ronnie had with his skates one winter day while you were in this foster-home?

A. Yes, I do.

Q. Tell the Commissioner about it.

A. She used to let us go skating on the street. There wasn't many cars. Maybe she was hoping there would be, but there was no cars used on the street, but it wasn't busy, so we would put on our skates and skate up and down the road, and I remember we were finished skating and we were cold and we wanted to come in. So I went up to the door and knocked on the door and asked if myself and Ronnie could come in and she said "No, stay outdoors," and I told her, I said, "Ronnie is complaining of cold feet and his skates are starting to hurt his feet and he wanted to come in a take them off." And she said, "No, go outdoors until I call you in." Well eventually she called us in and we went downstairs to take off our skates.

Q. Downstairs where?

A. In the basement. And I had to put my brother's laces in my mouth so I could get the ice off them so I could get them untied, and when I did his little feet were blue.

Q. How blue?

A. Very blue, and I put them under -- I put his feet under my shirt to try to warm them.

Q. Did your foster-mother find out about the condition of your brother Ronnie's feet at this time?

A. No, I don't think she cared. She never made any attempt to come down and see how we were.

Q. Was there a bathroom in the house, this house that you lived in as foster-kids for four years in Mount Pearl?

A. Yes, there was a bathroom upstairs.

Q. Were you allowed to use it, Mr. O'Brien, while you stayed in that house?

A. Sometimes.

Q. And when you weren't, what did you do then?

A. She would give me some paper in my hand.

Q. She would put what in your hand?

A. Some toilet paper in my hand.

Q. And?

A. Point me to the front door.

Q. And?

A. And say, "There's the dump up there. If you want to use the washroom, go up there."

Q. What time of the year -- what season of the year would this type of event happen to you?

A. It didn't really matter. I remember going both winter and in weather like outside today.

Q. Do you remember where the dump was in Mount Pearl at that time, Mr. O'Brien?

A. Yes, I do.

Q. Where was it?

A. I would go up Norma's Avenue, and there was another street right across it. I don't remember the name of it. I would walk, I would turn left onto that street, and then I would turn right and walk in towards wherever was the reservoir.

Q. You say you were living in the foster-home on Norma's Avenue in Mount Pearl?

A. Yes.

Q. Would you tell the Commissioner about the distance you would walk with the toilet paper given you by the foster-mother in order to get to a private place to use the washroom?

A. I wouldn't be able to give you a time. But for a small kid it seemed like forever. Sometimes it was dark.

Q. Would this request to use the washroom -- or I suppose more accurately, relieve yourself in the dump, be made other than during the night time?

A. No, because I would use the washroom at school, and in the summer time I played baseball, Little League Baseball, and there was a change room and a bathroom and that at the park, and I would use the washroom there.

Q. Where would you go in the dump area to relieve yourself?

A. I would just walk in the road until I thought nobody could see me.

Q. Might the washroom in the house where you were staying have been out of order on occasions when this happened?

A. No, she just wouldn't let me use the washroom. I never knew why.

Q. What about your brother Ronnie? Did he ever have to visit the dump?

A. Not that I can remember.

Q. Did you ever soil your clothes when you were a young person, either for some medical reason or because you never quite made it to the dump?

A. Yes, I did.

Q. How did the foster-mother treat you when that happened? Or, more to the point, when she found out that that had happened?

A. She'd let me stay there in my soiled clothes for a while until she figured I'd learned a lesson.

Q. Where? Where would you be?

A. In the basement, and she would take us to the washroom, or take me to the washroom, sorry, take my clothes off, and put me into a bath of ice cold water, and she would keep me there.

Q. Take your breath away?

A. Yes.

Q. How long would you be kept in the bath of cold water?

A. Until I was really cold and she came back and decided, "Okay, you can get out."

Q. Do you know whether she ever observed you from a distance after she had put you in a bath drawn of cold water?

A. I think she used to go out of the bathroom and just go around the corner and look in to make sure that I wouldn't get out.

Q. Were you allowed to drink sanitary water in this house?

A. No.

Q. What did you drink in place of sanitary water, Mr. O'Brien?

A. I'd drink water from the basement floor.

> **Q. What about Christmas time in each of the years that you were in this foster-home? Treated a little better perhaps?**
>
> **A. That was no different than any other day.**
>
> **Q. Where would you spend Christmas Day?**
>
> **A. In the basement."**

Little Roy O'Brien was housed upstairs and did not apparently occupy, at that time, any of the bunk-beds in the basement constructed for the other foster-children. But he did not escape chastisement since he, like them, was constantly hungry and constantly trying to steal food. In his deposition he was naturally less able to recall the events of the four-and-a-half years before Dereck and Ronnie were transferred to another foster-home in O'Donnells and finally to one at Admiral's Beach where they stayed until going to Mount Cashel in 1974. After a prolonged search and much reluctance to testify to the commission Roy O'Brien gave a deposition to Mr. Day on April 20, 1990 in St. John's.[119] On the subject of the Mount Pearl foster-home he was asked and answered thus:

> **"Q. In a general way describe what it was like living at the foster home in Mount Pearl?**
>
> **A. Well now I know things, I raise animals, my animals live better than I did or anybody else in that place did actually. We had no toys, no**

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[119] Exhibit C-0437.

> **Christmas, never ate at the supper table, never eaten chicken like what [name deleted] and their family had; what was thrown in the garbage used to sneak upstairs in the night time and steal stuff out of the cupboards to eat and it was very abusive.**
>
> **Q. In what way?**
>
> **A. I got a lot of beatings."**

Although his infantile memories of this period were naturally less vivid Roy O'Brien, generally speaking, corroborated what Dereck and Ronnie testified to. That part of his deposition recalling the visits of social workers is instructive:

> **"Q. You told me a moment ago that social workers came from time to time and for that purpose you were dressed up and you got a bath and you ate at the table on the night before the worker came.**
>
> **A. And in the morning before she got there.**
>
> **Q. Do you remember how long before the day of the social workers visit you knew the worker would be coming? Obviously it was at least the day before because you would get your bath and you would eat your supper that night with the family. How long before would it be the night or two days before or a week before or longer than that that you knew, Roy O'Brien knew, that the social worker was coming? She just didn't arrive by surprise?**
>
> **A. No.**

Q. And your foster-mother knew that she was coming?

A. I would guess yes.

Q. How long before as you remember?

A. Maybe a week before I guess.

Q. Do you know how she found out?

A. No sir I don't.

Q. Now when the social worker came to the house did you ever talk with the social worker on your own?

A. I can't say I have no.

Q. Did she ever speak to you and say Roy how are you making out? How is school? How are you being treated here? Were you ever asked questions like that?

A. Not that I recall no.

Q. But you may have been?

A. It's a possibility.

Q. Do you remember ever having said to a social worker who was there I'm not being treated very well at this place? Did you ever tell a social worker that you weren't being treated very well?

A. Not to my recollection no.

> **Q. And why did you not complain?**
>
> **A. Probably scared."**

Carl Edward Mallard, now a carpenter living in Alberta, listened one night to a Canadian Broadcasting Corporation programme televising part of Dereck O'Brien's evidence while switching to indignant denials by the foster-mother, and decided he had to come forward. He testified to the commission on May 2, 1990 and confirmed in moderate language, all the more impressive for that, what the O'Brien brothers had said, both expressly and by supplying details of his own experience. Denial to the children of the use of the lavatory seems to have been capricious but enforced as often as not, and Carl Mallard described one of his own frustrated attempts to secure its use with the result that he was kicked downstairs by his foster-father and involuntarily defecated as a result. The Mallard children had been taken into care because of family circumstances and had not been subjected to the neglect of the O'Brien boys; indeed their father would come every week to visit them. When asked if he had ever complained to his father or anybody else of the treatment in the foster-home he gave Mr. Day the following answers:

> **"Q. Did you complain to either of them about the events you are now describing this afternoon?**
>
> **A. No I didn't.**
>
> **Q. Why did you choose not to do so?**
>
> **A. I'm not quite sure to be totally honest.**
>
> **Q. Did you tell anybody?**

> **A. No.**
>
> **Q. Is there a particular reason why you did not?**
>
> **A. Well like I say, it wasn't until this past few years I actually realized that I was abused. It was just that I thought we were just bad kids and that we deserved to be punished like that."**

Carl Mallard had the same difficulty that Dereck O'Brien had in giving his evidence; in the midst of unperturbed recollection of the events at Norma's Avenue he would break down, recalling for instance being kicked downstairs and hearing the screams of children being punished. When he left Mount Pearl and went to a new foster-home at St. Vincent's in St. Mary's Bay he said on February 17, 1970 - a date he would never forget - it was like going to heaven and the children there, and there were many of them, were well treated and with love and understanding. Dereck and Ronald O'Brien had been removed to a foster-home at O'Donnells in St. Mary's Bay on July 31, 1969 and evidently spent an agreeable year there until the illness of the foster-mother compelled another move to foster-parents at Admiral's Beach. Here they were happy until they were placed in Mount Cashel at the beginning of 1974.

Even more dramatic than the appearance of Mallard as a corroborating witness was that of the Mount Pearl foster-parents adopted son who had been much disliked by the foster-children because of the favours he received and the brutalities he was encouraged by his parents-cum-grandparents to inflict. He gave solid support to the stories told by the O'Brien's and by Carl Mallard. He felt his own birth out of wedlock had precipitated the whole foster-home performance;

although glad to have the companionship of his foster-brothers, he felt that this experience instead of enriching his life had stultified it. At the height of the foster-home activity he thought "about eleven" children were in the three-bedroom bungalow house at one time, and records of social services indicate at least ten. The visits of welfare officers, as they were called when the home was first licensed, were well advertised ahead of time; they were brought by Bugden's blue taxis - as he recalled - which would wait in the driveway for their conclusion. According to this witness the idea of additional quarters in the basement was suggested by one of them. Dereck O'Brien had been his contemporary and a potential friend, but his grandmother would not permit any friendship to exist, and had indeed described Dereck simply as "passing through". She herself he believed had been a victim of child abuse and would not allow the children to be happy; it was wrong to be that. Dereck he said was a little boy, not saucy and no trouble.

Although Roy O'Brien, being the youngest, did not at first share the indignities and discomforts of the basement, it can be maintained that he was the principal sufferer among the O'Brien boys from the treatment he and others received. Whereas Dereck and Ronald were able to recover their emotional stability in the humane atmosphere of their St. Mary's Bay foster-homes, Roy was left behind in Mount Pearl until 1972 when he was ten years old and then placed in two foster-homes in succession of which no placement records apparently exist. In 1973 he was taken back to Mount Pearl from where he had only briefly escaped. By this time he had become a problem; withdrawn and generally hostile, he showed all the symptoms of a deprived childhood. Again he went on his travels, first to the United Church Receiving

Home on Hamilton Avenue and finally in March 1974 to Mount Cashel Boys' Home and Training School. Here he remained until 1978 when an unsuccessful effort was made to place him with his father in Toronto, an experiment lasting only three months; he returned to Mount Cashel of his own volition. From there he was expelled at the age of sixteen and placed on behalf of the director in a juvenile detention centre at St. John's from which he was discharged a year later. Roy O'Brien said quite candidly in his deposition that he had been pushed through various grades at school and had never really progressed beyond grade six. He now lives and works hard in British Columbia as a logger.

Not the least astonishing part of this story is how and why the department of government concerned, and particularly the director of child welfare and his staff, allowed it to happen. In the first place the foster-home at Mount Pearl was constantly overpopulated, not only in fact but in relation to its licensed capacity. It is easy enough to blame the over-population on the greed of the foster-parents, but the grandson's opinion - not to be treated lightly - is that social workers were only too prone to overload it. If this is so it may explain to some extent fulsome praise lavished on the foster-parents, and particularly the foster-mother, by a succession of reporting social workers. I can do no better in approaching this subject then to quote the note prepared by Mr. Day and commission investigator W.H. Orser which effectively summarizes what the documents included in the child welfare profile say at length. It will be appreciated that because of the appearance of practically everyone concerned at hearings of the commission, and the wide publicity given to the story, there is some ambivalence in the editing and few of the usual deletions appear in the text:[120]

> **"The index cards opened and maintained on this foster home from 1965 to 1975, in addition to listing the 46 children in the Director's care and custody who were placed there on his behalf during that ten year period, containing entries summarizing assessments of this foster home by Department of Public Welfare (from 1970: Department of Social Services and Rehabilitation; from 1972: Department of Social Services) as follows:**
>
> **12-6-67: There are presently 4 children in this home. A report on sleeping arrangement has been requested.**
>
> **12-7-67: Sleeping arrangement satisfactory. Home relicensed for 4.**
>
> **4-7-68: One of the very best homes.**
>
> **20-10-69: Excellent home.**
>
> **27-10-69: Re-licensed to care for 6 children.**
>
> **14-5-70: Continuing to provide excellent care & service for all their children.**
>
> **6-4-71: W.O. feels this is an Excellent F.H. Children receiving lots of love & care.**
>
> **8-5-72: Exceptionally good foster home, according to Welfare Officer.**

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[120] Exhibit C-0447, pp. v - viii.

20-7-73:	W.O. maintains this is an excellent home & all children placed here improve greatly.
2/10/74:	W.O. will keep close supervision on this home with the hope to reach the high standard it has previously been noted for.
4-4-75:	Due to problems experienced between foster parents & foster children in this home W.O. recommends that the home of Mr. & Mrs. ... ... be closed.

Besides the index card entries there were, up to and including 20 July 1973, reports by several Welfare Officers which expressed the opinion the home provided excellent foster care.

One of these reports, dated 14 May 1970, stated in part:

> There are seven children in the ... Foster Home. Although the home is licensed for six children, the seventh was placed there on an emergency basis.
>
> I am pleased that Mr. & Mrs. ... are continuing to provide excellent care and service for all their foster children.

On 13 April 1973, however, Bernadette Walsh, a Welfare Officer doing child welfare work at a community District Office, prepared for the Director a "Narrative Progress Report" on Son 1 and Son 2, who then resided in a foster home at a rural Newfoundland community. Information from Son 1 and Son 2, summarized in her Report, was critical of the quality of foster care they had received in the urban foster home. The Report stated, however, that in the opinion of Son 1 and Son 2, their brother Son 3 (then residing for a second period at the Mount Pearl foster home) was "quite happy living there." On the basis of every reasonable inquiry and search by Commission Investigators, there is no evidence there was any response by the state to this Report.

On 09 August 1975, Welfare Officer P. [Patricia] Roberts from St. John's District Office visited the urban foster home. That visit, and her resulting report dated 27 August 1974, initiated a series of events which ultimately resulted in all foster children being removed from the home by 26 February 1975, and the foster home licence for the home being revoked on 12 May 1975.

Commencing in or about 1976, efforts by the foster parents, including contact with staff in the office of the Premier of Newfoundland, to have their residence re-licensed as a regular foster home were unsuccessful.

On 12 April 1976, the Minister of Social Services R. Charles Brett wrote:

> 12/4/76:
>
> This is a good report [referring to a report dated 02 April 1976 to the Director from Sharron Callahan, the Child Welfare and Corrections Supervisor at St. John's District Office] & Mrs. Callahan should be complimented.
>
> I have never doubted the wisdom of our staff in recommending that Mrs. ...'s licence be suspended.
>
> No further action is required."

Notable and perhaps unusual in the story of this foster-home during the decade 1965 to 1975 is its apparent immunity for most of that period from anything but the most perfunctory inspection. This was clearly contrary to the policy of the department of social services, but the practice may well have been lax particularly at a time when professionalism had not reached the level of self-consciousness prevailing in later years. It is true that the report of Bernadette Walsh (now Myers) in April 1973 stated that Dereck and Ronald recalled the four years they spent at Norma's Avenue as "the unhappiest in their lives". Walsh continued as follows:[121]

> **"Apparently, Mrs. Dinn often mistreated the boys and they felt she was a very cruel, heartless person. She often beat them with sticks and belts, often made them stand to eat, forced them to go outdoors to use the bathroom rather than let them use the indoor bathroom, etc.. The boys recently visited the home to see their brother, Roy, and they now feel she must have changed over the years because Roy is quite happy living there. However, they still find it very difficult to forget all of the unhappy incidents which occurred while they were living in this home and, while there, they stated for the first time in their lives they experienced the powerful emotion of real hatred."**

At first glance one might conclude that Roy O'Brien's apparent contentment had caused an analyst of this report to discount the sincerity of his brothers' complaints, but as Mr. Day and Mr. Orser pointed out in their prefatory note to the profile there is no evidence that any recipient of Bernadette

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[121] Exhibit C-0447, p.31.

Walsh's narrative progress report took any action. The only indication that this warning from St. Mary's was perused at all is a misleading alteration of the date of Ronald O'Brien's birth to make him a twin of Dereck's, and it is unlikely that this emendation in pen and ink was made by the author. It was not until August of 1974, when there were only five foster-children in the foster-home that the discerning eye of Mrs. Patricia Roberts, a welfare officer working from St. John's district office, detected flaws in the foster-mother's methods of raising young children, and her report to Jerome Quinlan, regional administrator at Harvey Road, countersigned by Catherine Cahill her supervisor, provoked a cautious note from Mr. Simms, the director, saying[122]:

> **"I believe that some way must be found to point out to Mrs. Dinn where she is going wrong without stirring up a scene. There appears to be very little doubt that she provided a satisfactory service in years past and we need that kind of service now."**

But the tenacity of Mrs. Roberts, supported by her supervisors, was rewarded a year later. All the children at Norma's Avenue were withdrawn and the licence revoked.

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[122] Ibid, p.44.

Child Welfare Profile No. 5: A Battered Child in Central Newfoundland.

The documents in this case[123] were introduced to the commission by Mr. Day offering them in evidence, and calling to testify Dr. Teodoro Rosales whom I have already referred to. A graduate of the University of the Philippines College of Medicine in 1963, Dr. Rosales was awarded his fellowship in paediatrics by the Royal College of Physicians and Surgeons of Canada in 1972, having in the meantime interned at the South Buffalo Mercy Hospital in Buffalo, New York and performed his residency in paediatrics at the Children's Hospital in the same city. A post-doctorate fellowship at the same hospital led to his appointment as senior paediatric resident at the Izaak Walton Killam Hospital for Children in Halifax, and then to the chief residency in paediatrics at the Dr. Charles A. Janeway Child Health Centre in St. John's. Thereafter, as has been observed, he transferred his practice to Grand Falls and Gander, with the exception of two years spent as a fellow in paediatric genetics at McMaster Medical Centre in Hamilton, Ontario, beginning in 1980.

Dr. Rosales testified on April 5 and 6, 1990. He said that the child in question had been referred to him in 1972 when he was working with Dr. John C. Crosbie in a travelling clinic. When first seen he was an eleven-month old baby undernourished and with a short left leg. He was admitted to the Central Newfoundland Hospital in Grand Falls. Dr. Rosales, who had had some experience of the syndrome while in Buffalo, at once suspected he had a battered child on his hands and had him transferred to the Janeway Child Health Centre where the diagnosis was confirmed and the director of child welfare informed. Extensive x-rays revealed nineteen "old" and recent fractures including a serious one of the head and of the left femur which caused the shortening of the leg and was more than thirty days old, whereas a fracture of the right parietal bone in the skull was recent. In his opinion, and in that of the experts at the Janeway, these were caused by the jerking down and twisting of joints in the arms and legs and the damaged vertebrae from dropping. While the child was in St. John's, Dr. Rosales reported by telephone his case as a suspected battered child to the Gander district office of the department of social services. This was on December 19 and on December 21 a social worker visited the mother, recently married and arrived in Newfoundland from Nova Scotia; she had been carrying the child when she was married and biologically he was not the son of her husband. The wife was very nervous, talkative and defensive and was again pregnant. She was reluctant to talk about her husband who did not appear, and seemed more concerned with the possibility of being blamed for her child's injuries than with the injuries themselves. This led to a report on January 4, 1973 saying that "things are not right in the ... household" and a second home visit was projected "when it will be arranged that both [husband and wife] are at home".

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[123] Exhibit C-0422.

A somewhat different comment was made two days later by a public health nurse to a social worker at the Central Newfoundland Hospital, describing a visit when she found the stepfather at home. She reported him to be "a very carefree sort, at times on social assistance and at present drawing unemployment insurance". A less favourable impression was produced on the child welfare worker who originally interviewed the mother, but she concluded her report of January 10, 1973 as follows:

> **"worker has not found sufficient evidence in her home visits to the [mother and stepfather] to either confirm or negate the suspected battering of [the child]. For this reason, Worker recommends that [the child] be returned to his parents, under close supervision by this department and by the medical profession."**

The district supervisor was a co-signatory of this document.[124]

On January 10 the child welfare worker in question sent a copy of her second report to Dr. Rosales which must have crossed in the mail a lengthy and specific letter to her from the doctor, reiterating his belief as to the cause of the child's injuries, strongly recommending placement of him in a foster-home and suggesting in the last resort "very close supervision by your department" if the child had to be returned to his family. Copies of this letter were sent as a matter of course to the referring doctors and to "Mr. Simms, Dept. of Child Welfare". On January 30 a departmental officer swore an information and complaint before Magistrate C.C. Stone in Gander, the child having been taken into care by the director on January 23 while in hospital. The application was under the *Child Welfare Act, 1972,* section 10 (1) to have him declared neglected. It was heard by Magistrate Stone in the court of summary jurisdiction at Gander on February 8 and on March 12 an order was made denying it and ordering the child returned to his mother. No reasons were given.

I have read what purports to be a record of the evidence, only a crude summary of the proceedings but sufficient to establish the fact that Dr. Rosales gave full and detailed testimony about the child's condition including his opinion that *inter alia* his legs had been deliberately twisted to cause fractures, which was rejected in the face of the evidence of the mother herself and her mother-in-law. No doubt there was a magisterial policy that a family should be kept together but such a decision pondered for over a month and rendered in the teeth of expert evidence, so conceded by the respondent, is mystifying. Both the minute of judgement[125] and the summary of evidence signed by the magistrate and dated May 24, 1973 are department of justice documents and there is no indication that section 12 (7) of the statute reading, "An order made under Section 15 shall recite the facts so far as ascertained in an investigation under this section and the Judge shall deliver a certified copy of the order to the Director" was complied with.[126] The Crown was represented not by counsel but by the child welfare worker who had sworn the information. One must assume that the practice which prevailed later of briefing Crown counsel where an application of this nature was brought and contested was not in place in 1973.

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[124] Exhibit C-0422, p.13.

The matter might well have ended there but, as Dr. Rosales pointed out, his partner in the treatment of diseases of infants and children in Grand Falls, Dr. John C. Crosbie, had friends in high place. On March 13 the day after Magistrate

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[125] Ibid, p.24.

[126] Section 2 of the *Child Welfare Act, 1972* under which the application in this case was expressed to be brought defines in paragraph (1) thereof "Judge" as meaning a judge of a Family Court of a Juvenile Court or a Magistrate.

Stone's decision, the two doctors wrote a joint letter to the Honourable A.J. Murphy minister of welfare, in terms of studied moderation as follows:[127]

> **"We have been informed on March 12, 1973 of Magistrate Stone's decision on the [...] case to return the child to the care of the parents. We don't know the details of the basis of the decision, and although we do not disagree in principle to this decision, our own feeling is that the case did not get the proper attention and expertise by those individuals and departments concerned.**
>
> **A case such as this, in our understanding and experience requires a very thorough evaluation of all its home, social and psycho-emotional facets under the supervision of the Department of Welfare which infortunately *(sic)* had not really been done here. The two reports of the social worker (who subsequently resigned from the department right in the middle of this case) who worked on this case initially are really the only so called home, social and psycho-emotional evaluation done by the Department of Welfare on its own and how the social worker arrived at her recommendation in her second letter (January 10, 1972) is beyond us.**
>
> **We thought that a magisterial inquiry might bring in more substantial information and also more concern on the part of the Department of Welfare to bring forth more information, but from what we can gather, the social worker and/or the local welfare office in Gander had not done much more to get other information which had bearing on the case such as medical and psychiatric evaluation of the parents.**

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[127] Exhibit C-0422, p.25.

> **One of us (T.O. Rosales) when called forth to give the medical testimony at the local magisterial hearing felt that the seriousness and implications of the medical evidence presented did not seem to have registered fully to those concerned.**
>
> **The very absurdity of some of the questions asked concerning the medical evidence seemed to indicate that the medical evidence presented was not really comprehended.**
>
> **It also seems that even after the magistrate's decision was made a specific formulation of the follow-up of the case has not been made.**
>
> **In conclusion, we reiterate that we do not disagree in principle with the decision made on the case, as the primary aim in cases like this is to rehabilitate the home and safeguard the welfare of the child, but we feel the efforts made by the individuals and departments concerned in this case to evaluate all the factors amounted to really just an exercise in ignorance and conclusive evidence of our antiquated approach to child abuse."**

Copies of this letter, signed by both physicians, were sent to the Honourable Dr. G. Rowe, Minister of Health; to the Honourable T.A. Hickman, Minister of Justice; Dr. John Darte at the Janeway Centre and its administrator Mr. Kelland, as well as the Gander welfare department, thus saturating the target, but producing only one ministerial reply given by Mr. Hickman on March 20 addressed to Dr. Crosbie expressing his concern that the welfare of the child might be in jeopardy and advising him of further action to be taken. In this connection he wrote to Mr. Murphy on March 20 advising him that Mrs. Mary Noonan had been assigned the case, and on March 23 a notice of appeal was filed by her in the Supreme Court of the province.

In the meantime the house to which the child had been returned was closely supervised by child welfare workers instructed by Sheila Devine and Neil Hamilton for the director, but the first favourable reports became by June 21 more sombre, and a new child welfare worker warned against ruling out the danger to the child because of the refusal of the step-father to be present at any visit, and finally and in consequence the refusal of the mother to allow him entry. This report, co-signed by the district supervisor recommends removal of the child and concluded: "even though there is no concrete evidence worker feels that the possibility of child battering does exist". At length in June the appeal was heard and Puddester and Higgins, J.J. gave judgement committing the child to the care and custody of the director of child welfare for a period of six months, Puddester J. saying, "in the result, then, we feel that in the circumstances of the case and on the evidence the Magistrate should have declared the child to be a neglected child within the Statute".

Mr. Day's prefatory note of what transpired thereafter may be considered sufficient, and reads:

> **"As a result of the Supreme Court's judgement and subsequent Orders made by Magistrate Stone under The Child Welfare Act, 1972, the child remained in the Director's care and custody: temporarily, until 11 October 1974, and permanently, from that date; and resided in a succession of foster homes in Newfoundland.**
>
> **On 29 March 1978, following two attempts in Alberta to do so, the child was successfully placed for adoption in Newfoundland.**

> **Commission Investigator W.H. Orser has been unable to locate any person who can say or any document which states that the police were ever requested to conduct a criminal investigation into the circumstances that resulted in the child being initially committed to the Director's care and custody on 22 June 1973."**

On April 28, 1990 the mother, now remarried and living in Nova Scotia, at the request of commission investigator G. Frederick Horne made a deposition before a notary public of that province saying:[128]

> **"At no time while I was a resident of Newfoundland and at no time since my relocation from Newfoundland back to the Province of Nova Scotia was I ever contacted by a member of the Royal Canadian Mounted Police or any other police department and asked whether my son had been physically abused by me or my husband or by anybody else. In fact, no policeman has ever contacted me at any time or in any place about the injuries which Dr. Rosales told me that my son had."**

There is no evidence that police were ever informed by the director of child welfare and rehabilitation or any of his agents of the plight of this child and the inescapable conclusions flowing from it. At the end of Dr. Rosales evidence before the commission I suggested to him that this was a case of torture, and he agreed.

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[128] Exhibit C-0444.

Chapter VI

A Battered Child on Conception Bay

Contemporaneous with the story of Dr. Rosales' patient was that of a little girl who was not so fortunate and who never reached her fourth birthday. She was born in July 1968 as the first child of the marriage of her nineteen-year old mother and twenty-year old father living in the area of Conception Bay, both unemployed and supported by state social assistance. She was her mother's second daughter, the first having been born out of wedlock and I shall refer to them as did counsel as daughter 1 and daughter 2. A son was born in October 1971 - son 1 - and in August 1974 the family unit was completed by the birth of son 2. Almost from the beginning of her short life daughter 2 ceased to thrive and was bedridden. When taken by her mother to a local hospital she was at once transferred to the Janeway Child Health Centre in St. John's with the observation that her difficulties might be due to scurvy. The Janeway Centre's records contain the following descriptive note:[129]

> **"She was a 3½ year old child lying quietly with her legs and arms flexed and would wimper and cry when only slightly touched. Her head had numerous small bruises and lumps and her face was covered with scratch marks and a few bruises resembling impetigo. There were some glands in the neck. The chest was clear. The cardiovascular system nomral. *(sic)* Eyes, ears, nose and throat normal. Abdomen revealed softness, liver and spleen were not felt and there was a fullness in the left flank in the left renal area. Examination of the limbs showed that all four limbs had small bruises and deformities and there was small**

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[129] Exhibit C-0449, p.4.

> **fluctuant swellings over the right elbow and a deformity of hard callous formation in the left leg."[130]**

The conclusion of this report, styled "discharge report" signed by Dr. R.G. Dominic, who testified to the commission, concluded: "... it was our impression that this child had severe malnutrition, septicemia with septic arthritis and fractures. She did not respond to treatment and died on April 3, 1973. Death was due to septicemia with multiple abscesses of the scalp, pharynx, lungs and kidneys."

Dr. Hutton performed the autopsy pursuant to an order by a stipendiary magistrate obtained by two R.C.M. Police officers one of whom was the then Constable W.H. Orser. The doctor gave extensive evidence to the commission of his findings on May 3 and 4, 1990 illustrating on a medical model some nineteen fractures sustained at different times, and giving his opinion that the child had probably never walked and had spent most of her life in severe pain. These fractures were characteristic of injuries due to blows, twisting of the limbs and, as to a fracture of the femur, indicative of great force. Fractures of the ribs were apparently caused by a sharp object. He gave sworn evidence at the magisterial inquiry conducted in May and its concluding paragraph reads:[131]

> **"In my opinion this child died of a septicemia with staphylococcus aureus. It was quite evident that the bacteremia seeded colonies of staphylococcus to the lungs, kidneys and bones. The fracture sites were excellent areas to promote and acute osteomyelitis**

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[130] This entry is quoted exactly as written.

[131] Exhibit C-0449, p.42.

> **because of the pre-existing damage and hemorrhage. The site of the original abscess in all likelihood would be either the scalp abscesses or the retropharyngeal collection. It is my opinion that the histological findings at the sites of fractures are consistent with a repair process of not less than two weeks duration. There was a remote fracture of the left femur which I think was of approximately a years duration. I cannot conceive to this child receiving these four recent fractures as the result of one incident. Fractures of this nature would create extreme pain."**

The witness said that nowadays he would simply say "homicide".

All the proceedings in this case show that from the note of the referring physician at the local hospital to the last word given by Dr. Hutton in his evidence at the inquiry, local reports of spankings, radiologists notes of "repeated insults", and observations of consultants illustrated the nascent awareness of the battered child syndrome falling short of the full appreciation of its significance which now prevails. Indeed there is one document among the medical records, a blood bank and cross-matching chart[132] on which the words "battered child syndrome" are clearly visible. Dr. Dominic testified that his suspicions at the time were confirmed, but they only appear to have been noted in an "impression" on March 31.[133] The effect of professional caution at the time was principally felt by the police. In their testimony given at the magisterial inquiry the R.C.M. Police officers involved in investigating the family did not say that there was any evidence of violence, or indeed of other than normal chastisement, nor could the child welfare worker who taxed the father with "rumours that he used to beat the child", do other than accept his denial. He was not entirely convinced, however, but felt obliged to conclude his sworn evidence as follows:[134]

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[132] Exhibit C-0449B, p.21.

[133] Ibid, p.14.

> **"Although [the parents] said they did not beat [daughter 2], it seems unusual that they did not notice her slow development but according to them she had problems since birth and the doctors did not do anything about it. From my visit I saw no indication of neglect and home conditions appeared to be quite normal."**

Nurses at the local hospital testified that they were not impressed by the attitude of the mother who seemed "not overly concerned" about the child. But when the admitting physician from the Janeway Centre told the inquiry "I could not say that these injuries could be the result of child abuse. It is possible for these fractures to have been caused by falling off a chair", it is not surprising that the magistrate - evidently the third who had presided - concluded "circumstances are suspicious but that is all".

In the reports of the R.C.M. Police during the investigation conducted immediately following the death of daughter 2 the following appears under an entry for April 25 when two officers reviewed the autopsy report with Dr. Dominic: "he was quite satisfied with the final diagnosis "septicemia" which resulted from "Osteomyelitis" thus leading to the bone fractures. Again on April 26 the investigating officer reported that Dr. Dominic at the Janeway Centre had stated "that in his opinion it was not a matter of ill-treatment nor neglect on the part of the ... family." Although Dr. Dominic testified to the commission that he had been misunderstood by the police, this communication from the Criminal Investigation Branch of "B" division in St. John's, when the complete file of the investigation was forwarded to the deputy minister does not seem unreasonable: "When first reported this incident seemed to have all the earmarks of child abuse and/or neglect. However the subsequent medical opinion supported by the autopsy report revealed that death was due to disease. Our investigation has not uncovered any evidence of foul play or negligence and further police action is not deemed necessary." In his evidence Dr. Hutton indicated that if at the time the police had asked the "manner of death" as well as the "cause of death" they might have received a different answer. But they had been told that child abuse was a possibility, and they had seen the ghastly catalogue of injuries in the autopsy report.

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[134] Exhibit C-0449, p.25.

During the period of the police investigation the division of child welfare had launched an investigation of its own after receiving a report from the social service department of the Janeway Centre. On April 10 Neil Hamilton, for the director, asked the local welfare officer for a written report and on April 14 received one to the effect that "generally the home situation is very good" and that no evidence of neglect could be uncovered. The husband had admitted that there were rumours that he beat daughter 2 but described them as false. The worker reporting said that the "circumstances surrounding [daughter 2]'s death is a matter for the police and/or for the medical people." The author of this report was the same representative of the child welfare division as testified at the magisterial inquiry. No further child welfare documentation appears until 1979. Then it was the turn of daughter 1.

Beginning in August 1979, and as a result of rumours of violent treatment of his family by the husband and manifestations of concern about the safety of daughter 1, instructions proceeded from the office of the director of child welfare and rehabilitation to investigate and report the domestic situation. Still dependent upon social assistance, the husband resented any inquiries and displayed no interest in the education of his children. He was thought among the neighbours to be beating both wife and daughter, but as to the latter both husband and wife demurred. An examination for daughter 1 at the Janeway Centre was recommended by a local physician. A great deal of daughter 1's trouble was attributed to discord between her mother and father. Although no physical evidence of abuse was found, social workers took an unfavourable view of their attitude and of the standard of housekeeping so that informal supervision was maintained.

Then on November 29, 1982 the girl's "homeroom" school teacher noticed marks on her body, and, after talking things over with the child, received an allegation of physical assault. The guidance counsellor at the school reported the complaint to a social worker at the district office and daughter 1 was apprehended on behalf of the director at the school and placed at Presentation House in St. John's. From there she was moved to a licensed foster-home in a rural community and wardship proceedings were commenced on December 7. The husband was arrested and charged by the R.C.M. Police with assault causing bodily harm to daughter 1 and after remand was admitted to bail.[135] In the meantime the R.C.M. Police constable who had observed the autopsy performed by Dr. Hutton on daughter 2 in 1973, being now sergeant in charge of the detachment with jurisdiction, had been called by a child welfare worker involved in the case of daughter 1. Sergeant Orser - for it was he - and a member of his detachment started their investigation of the allegation of child abuse on December 1, 1982, and examined the child welfare and social assistance files at the department's district headquarters. No medical history for daughter 1 was disclosed, but there was a great deal generated by the death of daughter 2 almost ten years before, including the discharge report from the Janeway Centre communicated to the local hospital and sent to the department of social services. The police file had been destroyed, but the department of justice supplied what papers were needed to enable Sergeant Orser to consult the chief forensic pathologist Dr. Eric Pike, who was of the opinion that daughter 2's death was due to child abuse. In search of a second opinion Orser was advised by Drs. Hutton and Cooper of the Janeway Centre to consult Dr. John P. Anderson of the Izaak Walton Killam Hospital for Children in Halifax.

After a conference of senior department of justice and R.C.M. Police officers, Sergeant Orser was authorized to proceed to Halifax and present the case to Dr. Anderson. By this time the two police officers had taken statements which were indeed more positive than anything that had been said in 1972, Dr. Hutton informing Orser by letter that "it is my considered opinion that in reviewing the history and the autopsy report that this is a 'battered child syndrome'". Dr.

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[135] In spite of the official attempt to substitute the cumbersome term "judicial interim release" the public cling to the simple and historic term "bail".

Dominic wrote: "After examining the child on admission and noting the multiple bruises and fractures it was my impression that this child was suffering from a case of 'battered child syndrome'. I have reviewed the chart again and the various reports and I still maintain that the findings are compatible with battered child syndrome." He had also taken statements from the mother's two sisters, a sister-in-law and grandmother. On December 20, 1982 the mother and father of daughter 2, dead since April 3, 1972, were charged with criminal negligence causing death under section 203 of the Criminal Code, and on January 4, 1983, Dr. Anderson, having been visited by Sergeant Orser and supplied with the admission records of the two hospitals and a copy of the autopsy report by Dr. Hutton, transcripts of the magisterial inquiry conducted in 1972 and January 1973 copies of x-ray photographs of daughter 2 and original photographs of daughter 2, with Dr. Hutton's letter to Orser, delivered his report on January 4, 1983. His findings should be quoted in fairness to those who played their parts ten years before:[136]

> **"I have spent several hours reviewing all these documents and have come to the following conclusions:**
>
> **1. The actual cause of death was cardiac arrest following acute septicemia, multiple foci of osteomyelitis, and multiple abscesses of lungs, kidneys, the retropharyngeal area, and the scalp.**
>
> **2. There was no biochemical or x-ray evidence of underlying rickets, scurvy, or any metabolic bone disease.**

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[136] Exhibit C-0449, pp.115 - 116.

3. **The child was, in my opinion, physically abused on multiple occasions. This opinion is based on Dr. Heneghan's report and my review of the x-rays with a staff radiologist at the Izaak Walton Killam Hospital for Children. This evidence leads me to conclude that there were remote (greater than one year), recent, and very recent (less than 2 weeks) fractures, some of which are typical of those seen in the battered child syndrome (due to traction and/or shearing forces causing metaphyseal fractures: reference enclosed).**

4. **This child was also grossly malnourished as judged by the description by attending physicians, the photographs taken at the autopsy, and the growth chart.**

5. **It is my opinion that this child must have been in severe pain on several occasions extending over a year with untreated fractures, such as the fractured left femur. She probably never walked because of the fractures and associated pain.**

6. **The attending physician at the Janeway, Dr. Dominic, wrote on March 31, 1972:**

   "Impression - Multiple bruises and deformities of limbs most likely as a result of battered child." I have seen no reason to doubt his opinion on first seeing this child.[137]

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[137] Exhibit C-0449B, p.14.

> **7. On transfer to I.C.U., a physician with the initials "A.N.", perhaps for "A. Nethercott", has stated: "Summary: Probable battered baby syndrome."[138]**
>
> **In my opinion, this child was physically abused on multiple occasions by a person or persons unknown to me and she was grossly malnourished at the time of death.**
>
> **I feel that this was a case of "battered child syndrome" which only came to light because of the severe septicemia from multiple sites of bacterial abscess and osteomyelitis requiring emergency hospitalization."**

It will be noted that finding number one as to the cause of death is indistinguishable from the findings expressed at the Janeway Centre in 1972, although Dr. Anderson's opinion as to what produced this result is uncompromising.

While the two boys continued to live with their parents the Unified Family Court of the Supreme Court of Newfoundland made an order committing daughter 1 until June 30, 1983 to the care and custody of the director of child welfare as a neglected child, and a further order to investigate the circumstances surrounding her for report not later than May 2. Then on June 13 an order for temporary wardship was made in the same court in respect of sons 1 and 2, but provided that the two boys continue to reside with their parents under the supervision of the director, and further ordered that they be included in the assessment order respecting daughter 1.

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[138] Ibid, p.25. There is an additional unattributed impression at p.12: "probably battered baby".

Finally, on August 30, 1983, some six months after the mother and father had appeared to answer the charge of criminal negligence causing death, the preliminary hearing on that charge opened in the Provincial Court in St. John's to which the proceedings on consent of counsel had been removed. On the subject of the difficult decisions which had to be made as they unfolded, the Crown Attorney who prosecuted was good enough to testify to the commission.

Seamus Bernard O'Regan - now the Honourable Mr. Justice O'Regan of the Trial Division of the Supreme Court of Newfoundland - testified to the commission on May 7, 1990 and gave valuable evidence as to the conduct of the case in which he appeared for the Crown. This was provoked by a remark which I let fall on a previous day when my eye fell upon a letter written to the officer in charge of the Criminal Investigation Branch, at "B" Division, R.C.M. Police dated October 10, 1983, principally to convey Mr. O'Regan's gratitude for the good work of Sergeant Orser. At the beginning of this letter the following paragraph appeared:[139]

> **"As you are probably aware, the charge against Mr. ... ... was dismissed and his wife, ..., pleaded guilty to the included offence of assault causing bodily harm. We accepted the plea on the lessor charge, due mainly to the fact that our subsequent investigation revealed that the child was at the hospital some three days before treatment was commenced and that was certainly a contributing factor to the death of the child. Although in law the party causing the injuries would still be responsible for the ultimate death, we felt that under the circumstances that if the matter**

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[139] Exhibit C-0449A, p.269.

> **proceeded to a jury trial, that the jury would return with the lesser and included offence."**

A brief description of what transpired at the beginning of the preliminary hearing and during subsequent developments will serve to introduce Mr. Justice O'Regan's explanatory analysis.

The prosecutor had under his hand the expert evidence of Dr. John P. Anderson and the highly incriminating statement of the sister of the accused wife. After leading the evidence of Dr. Anderson before Provincial Court Judge Seabright he called the wife's sister who stubbornly maintained that the statement she had given to the police was "all lies". Mr. O'Regan put it to her almost sentence by sentence and, although at one point she broke down, she continued to maintain this position even when counsel forcefully pressed her as to violation of her oath. There was then an adjournment and on the following day this accused who, with her husband, had elected to be tried by judge and jury, with consent of Crown counsel re-elected to be tried by a magistrate sitting alone and the hearing preliminary to trial on the charge of criminal negligence causing death was converted, also on consent, to a substantive trial before Judge Seabright, to whom she pleaded guilty of the lesser and included charge of assault causing bodily harm to daughter 2. After ordering a pre-sentence report Judge Seabright remanded her for sentence to October 7, 1983 and in due course sentenced her to two years imprisonment in Her Majesty's Penitentiary. No evidence was offered against the husband at the preliminary hearing, and he was discharged. Subsequently the charge of assault causing bodily harm to daughter 1 against him was disposed of in the same manner.

Mr. O'Regan, as senior Crown attorney, had been associated with Sergeant Orser from the beginning of the investigation; as he pointed out the charge was laid at the earliest opportunity so that the investigation could continue and he had drafted it himself, the practice at that time being for the police to consult the Crown attorneys on charges of major crimes. He had two accused to be tried together, always a source of difficulty. He was faced with his only witness considered able to bring home the charge to the accused being hostile, and was particularly concerned to obtain a conviction to assist the department of social services in dealing with the surviving children. If the judge presiding at the preliminary hearing were to find that there was insufficient evidence before him upon which a properly instructed jury could convict and dismissed the charges, he was not satisfied that the minister in his capacity as Attorney General of the province would prefer an indictment. Then if there were to be a jury trial the witness said he was doubtful that the jury would convict because of a defence which would inevitably be raised on the grounds that hospital treatment or the lack of it had been responsible for the child's death, however bad in law that defence might be. When the conviction had been obtained and the sentence of two years imposed he had felt a great sense of relief. He had not acted on the appeal, having been appointed to the bench, in the meantime, and he did not, as one might expect, make any comment on its result. It must be noted that on January 26, 1984 the Court of Appeal allowed the mother's appeal of sentence, varying it to six months imprisonment and three years probation during which she was bound to submit to psychiatric assessment and treatment. The sentence of the court was delivered by Mifflin, C.J.N. who emphasized the importance of rehabilitation and had this to say in the course of delivering oral judgement:

> **"On October 7, 1983 the learned Provincial Court judge stating that "as a result of beatings or as a result of injuries, a child who was born to you has died" sentenced [the convicted mother] to two years in jail. The evidence, however, does not disclose that the child died as a result of injuries inflicted by [the accused mother], nor did she plead guilty to that offence. She pleaded guilty to assault causing bodily harm, and she must be sentenced for that offence."**

The maximum sentence for conviction for the offence of assault causing bodily harm provided at the time in the Criminal Code was five years imprisonment.

The resolute action of the director of child welfare and rehabilitation in the case of the surviving children has already been described and the division has to this day been closely associated with their welfare both as wards and in the field of extended care. They have suffered much, and their plight, as a result of a devastated childhood of physical violence meted out by a near-retarded father to his wife and them, is well described, as might be expected from her record of compiling lucid and authoritative assessment reports, by Marilyn McCormack, senior court counsellor of the Unified Family Court, in her report ordered by the Honourable Madam Justice Cameron and submitted on March 14, 1983,[140] a social document of a high order.

In the course of his evidence Dr. Hutton, who performed the autopsy on the little girl whose sufferings are here briefly recorded, said that had she survived she would have been a helpless cripple.

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[140] Exhibit C-0449A, pp.353 - 367.

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Cases of Sexual Abuse

The reporting of sexual abuse cases tends to involve a selection of the sensational over the routine; it is the sensational case which tests policy and practice to the utmost, and generates revisions of policy manuals, circulars and other forms of instructions and guidance to departmental workers in the field. For insight into day to day routine of a department the most important witnesses are those who have had the longest continuous experience of its work. Three former ministers, two former deputy ministers, two former assistant deputy ministers and a former director of child welfare and his successor all assisted the commission with information and recollection but because of their long association at the helm of the child welfare division the testimony of Frank J. Simms, director of child welfare from 1971 - 1989 [with the exception of a year in 1984 - 1985], of Sheila Devine as assistant director of child welfare from 1971 to 1983 and again from 1985 - 1987 becoming assistant deputy minister in that year and holding office until January 1990, and of Neil M. Hamilton who was at divisional headquarters from 1966 - 1979 as welfare officer, child care and protection officer - now social services programme coordinator - and for two separate periods acting assistant director of child welfare, were of exceptional importance. In the last case the fact that Mr. Hamilton became in October 1975 supervisor of child welfare in the St. John's district office, and later in 1983 district manager of the new St. John's East office, had not diminished his grasp of essential problems and current policies of the division.

At another level former deputy minister H.V. Hollett said that former assistant deputy minister George Pope was *the* authority on child welfare in Newfoundland. Furthermore all along the line from the Confederation Building to Harvey Road and to the rest of the fifty-two districts in Newfoundland and Labrador the story, in many cases heroic, of the record of this embattled division, and the documents which have escaped the "weeding" process of destruction have been sought and assembled by the commission's investigators, analyzed by counsel and presented systematically to the commission in public hearings for the greater part of their continuance. When the hazards of investigation by men and women engaged in child welfare work, apprehending children in need of protection and supervising households whose heads often live on social assistance, and devote a large part of that to the consumption of intoxicants of one kind and another, are considered, it is remarkable that no trace can be found of any policy or practice of suppression of the mounting numbers of complaints of child abuse. Apparent exceptions to such a conclusion are those cases where the administration of justice was responsible for a decision that prosecution should not proceed on the basis of evidence given by reluctant children, sexually abused by a parent with the predictable result that the fragile family bond would be irretrievably broken, or by child welfare workers who foresaw all their hard work devoted to keeping a family together to go for nought if primary emphasis were put upon an isolated case of abuse in an otherwise stable and affectionate environment.

An example of the former is child welfare and criminal investigation profile no. 5[141] where an R.C.M. Police officer recommended against laying charges of indecent assault against a father because the child complainant, who had originally told a story of sexual abuse to her guidance counsellor at school, recoiled from the idea of testifying in court against him as one she believed to be "sick" and in need of help and treatment. Several examples of this, in so far as the child welfare division did not choose to involve the police, were brought to the commission's attention and one - child welfare profile no. 6[142] - has been described at length. In one case, in a northern community, child welfare and criminal investigation profile no. 1, the child welfare supervisor was so concerned with the problem of keeping the family together through mediation of marital difficulties of the parents that, over the protests of a subordinate worker whose efforts had uncovered a serious case of physical abuse of the children by the mother, for a perilous period she refused to apprehend them and the Constabulary were finally called in by that worker to assist.[143] But although motives in these cases may be questioned, no instances of suppression of allegations of physical and sexual abuse of children of the type contemplated in article II of my terms of reference, namely as consideration for an offender leaving the province, have been encountered. Indeed in examining these episodes one is often moved to sympathize with the moderation and compassion of many a hard-worked, over-burdened child welfare worker in trying to keep together a family threatened by drinking and violence, an objective which has provoked advocacy and approval in the highest quarters.

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[141] Exhibit C-0461.

[142] Exhibit C-0447.

[143] Exhibit C-0422.

Another example of the sort of problem which is at once appealing and frustrating to a sensitive administrator was presented by Miss Burke to the commission, investigated by Mr. G. Frederick Horne, as child welfare and criminal investigation profile no. 10. It also illustrates aspects of law enforcement of significance outside the range of child welfare. The complainant was a married woman and the mother of four children, the eldest of which, child 1, a girl, was born out of wedlock, not her husband's child but subsequently adopted. When child 1 was sixteen, she told her mother who had left her husband because of his drinking and had taken her children with her, that she, child 1, had for four years been sexually fondled by her father at night when he was drinking. In November 1980 the mother reported this to a social worker at the local district headquarters of the department of social services. After hearing the story and interviewing child 1 at school the social worker recommended that "this Department should not take legal action or have a police investigation into this as it could result in further emotional problems for child 1". It was hoped that the family would be reunited and continued "monitoring" was recommended. Nevertheless the director's office referred the matter to the department of justice, pointing out that there had been no sexual intercourse or abuse of the other three children, two boys and a girl. An associate deputy attorney general sought the opinion of senior Crown counsel who considered that the "allegations made by the child constitute gross sexual misconduct on the part of the parent". He further expressed the view that if the family were to reunite the possibility of child 1 returning to it was highly dangerous, and recommended that the matter be referred to the R.C.M. Police for investigation. This was done and the father was interviewed, giving the investigating officer an inculpatory statement in which he freely confessed his involvement and his regret. The officer's report noted the reluctance of mother, daughter, sister-in-law and clergyman to have proceedings taken against the offender, and referred the matter to the senior Crown counsel in his district "for instructions as to whether or not a charge of indecent assault should be laid". In due course this lawyer wrote a long letter to the senior R.C.M. Police officer involved in the form of a homily on the theme, "Crown counsel's duty is to see that justice is done rather than to convict the accused". Taking into account the improved conditions in the family, now reunited but without child 1 who was living with her uncle and aunt, and the fact that the father had stopped drinking, he concluded by giving his opinion that charges should not be laid against him unless there was a resumption of misconduct. The final paragraph of this letter is instructive:[144]

> **"As indicated, the decision not to prosecute is based on the assessment of the information in the file and the constructive atmosphere that is apparent in the family at this point in time and more particularly, and most importantly, in the life of [child 1] which has somewhat constructively been rebuilt in the immediate past, and any danger of destroying this certainly is the significant factor to consider in the prosecution."**

The police officer's comments were invited and he concurred.

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[144] Exhibit C-0464, p.31.

But child welfare headquarters continued to express concern and its local representative was instructed to maintain contact with the family. As an example of the predominant emotion of female victims of sexual abuse by fathers child 1's statement to the police is quoted in part:[145]

> **"Now that I am living with my aunt and uncle I don't want to go back to live with Mom & Dad, Dad especially, all I want to do is set these incidents aside and forget about it. I don't want to go to court on this because I really don't think it would do any good. It would just make matters worse. No doubt it would ruin any relationship Mom & Dad have now, or ever have a chance of having. If Dad ever had to go to prison Mom would resent me and my brothers and sisters would hold it against me with the fact that I deprived them of their father. I really think that now that Dad knows that Mom and some others know about this, it has taught him a lesson and I don't think it would happen again. For sure I don't want to go to court unless he ever did something like this to someone else."**

There is no indication among the documents that the associate deputy attorney general did anything other than confirm the decision of "the man on the spot".

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[145] Ibid, p.13.

Criminal investigation profile no. 4[146] and child welfare and criminal investigation profile no. 13,[147] the first occurring in the period 1985 - 1986 and the second 1986 - 1990, tell a complicated story illustrating the response of the child welfare division and the R.C.M. Police in relatively recent times to the complaints of two young women born in 1967, one of whom, Cynthia Durdle, was taken into care at the age of four under a non-ward agreement subsequently to become a permanent ward, and Kimberley Somerton also the subject of a non-ward agreement when seven years old, and believed to be a victim of physical abuse in her own family by the social worker concerned who noted that she was a terrified child. Both of them told their story to the commission under oath and before the television cameras and to the extent that their allegations have been made public and the subject of proceedings in court, the evidence can be referred to with modified editing in the interests of those upon whom anonymity should be conferred. The thread of Cynthia Durdle's story was first traced by commission counsel and investigators in child welfare profile no. 15[148] in which Mr. Day examined the situation of a foster-home in a rural community devoted to the care of specially handicapped children with, as the saying was, "special needs". This was a dependency of Exon House, itself a child welfare project specializing in this difficult and demanding work. The connection between Exon House, formerly an orphanage operated by the Anglican Church of Canada, with the division and the licensing of the foster-home in question, occurred in 1971 and in that year Cynthia, a four-year old sufferer from cystic fibrosis, became its first foster-child. The foster-mother had been a nurse's assistant at four hospitals, and because of the pressures of shift work had resigned at her husband's request. Both foster-parents were highly regarded by social workers within whose purview they fell for a number of years, and from an original licensing for one child the capacity of the foster-home was increased to nine. Although Cynthia was in need of care, she was not incapacitated and not a candidate for special needs. Nevertheless she made periodic visits to the Janeway Child Health Centre in St. John's and entered a cystic fibrosis camp in the country. At these places outside the foster-home she began to make complaints, to be kept in confidence as she maintained, about physical abuse by her foster-mother who, she said, was accustomed to strike her with a stick when there was any conflict between them, mostly because of what the girl felt was a heavy burden of domestic work doing dishes, cleaning floors, making beds, supervising children when the foster-parents were absent to the detriment of her homework and recreation. This culminated in 1982 when she was fifteen and when the social workers felt bound to investigate the matter. These workers, who had for many years been admirers of the foster-parents and their advocates in obtaining additional funds, were not sympathetic to Cynthia's complaints; one was definitely hostile and wrote ably and voluminously to headquarters on the subject of Cynthia's mischief-making which included maintaining a diary illustrating her complaints, and believed to be kept at the suggestions of confidantes at the Janeway Centre. The upshot of the unhappy tension developed in the foster-home was the removal of Cynthia to another location in the same area of Conception Bay where she developed an affectionate relationship with her foster-mother. I will at this point defer to the analysis of criminal investigation profile no. 4 and child welfare and criminal investigation profile no. 13 prepared by Mr. Powell, who presented the evidence, as an episode of his written argument and reproduced exactly as written.

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[146] Exhibit C-0524.

[147] Exhibit C-0474.

[148] Exhibit C-0628.

> "The investigation of alleged sexual assaults against children in foster homes created unique and difficult problems for one R.C.M. Police detachment. Two cases were examined in detail by the commission. Both relate to matters investigated by members of the eight person R.C.M. Police detachment in Holyrood, a town located at the head of Conception Bay about 48 kilometres southwest of St. John's. Each case involved young girls living in neighbouring foster homes located minutes from the R.C.M. Police office and both foster homes were within the jurisdiction of the social services district office at Kelligrews.
>
> First examined was a case relating to an investigation which took place in 1988. It was brought to the attention of the commission by a telephone call to commission investigator G. Frederick Horne from the uncle of teenage sisters, Trudi and Marlene Butt. Files obtained from the R.C.M. Police, the departments of justice and social services and sworn testimony of witnesses revealed the following events.
>
> In March 1983 fifteen year old Cynthia Durdle was placed in a foster home near Holyrood where she lived until the summer of 1986 when she confided to a

nurse from the Janeway Hospital that she had been sexually abused by her foster-father during her stay in that home. She was eighteen at the time of this disclosure and did not return to the home that fall. The confidence was not broken by the nurse.

Two years later, in July 1988, Cynthia Lois Wheeler, a social worker at the Janeway Hospital, heard of the earlier report and on July 19 called the Kelligrews social services office. The foster-home was identified and it was immediately known that the Butt sisters, both foster-children, were then living in that same foster-home. On July 28 Ms. Durdle, then twenty-one, described to social workers the sexual abuse she had suffered but insisted she would not speak to the police.

Karen Alexander at the social services regional office in St. John's was advised and she consulted with a department of justice lawyer who advised 'we had to be concerned with the protection of the children currently in the home'.[149]

On July 29 Kelligrews social worker Marilyn Campbell contacted the R.C.M. Police in Holyrood but did not disclose Ms. Durdle's name. An R.C.M. Police officer made a report of the call which included:

> 'This matter was discussed with Cpl. Praught. Since a sexual assault has taken place social services will have to divulge the name of the victim. Once the name of the victim is known arrangements should be made through Social Services to interview her at their office.'

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[149] Exhibit C-0474.

On that same day the social workers decided that in light of the 'probable risk' to the Butt girls currently in the foster-home, and because Ms. Durdle was unwilling to give a statement to the R.C.M. Police, the only alternative was to meet the foster-parents and confront them with the allegation.

On August 2 Ms. Campbell and a student social worker met with the foster-parents in their home. Durdle's name was not mentioned. Both foster-parents were upset by the allegation and stated they would consult a lawyer regarding this 'slander'. The social workers also interviewed the Butt sisters, Trudi - fifteen, and Marlene - thirteen, who had been living in this home for approximately two years. Both said they were well treated and did not want to be moved from the home.

The next day Ms. Alexander was again consulted and a decision was made not to remove the sisters from the foster-home.

On August 10, R.C.M. Police Constable Raymond Griffith was given the name of Ms. Durdle by Ms. Campbell but advised that she still did not want the police involved. He was also told the two teenage girls now living in the home 'seemed happy and well adjusted'. On August 16 Sergeant Douglas Hamlyn, officer in charge of the Holyrood detachment, was advised by social worker Ethel Dempsey that Ms. Durdle would now talk to the police and he instructed Constable Griffith to meet with her. On August 17 the Constable interviewed Ms. Durdle for three hours. While she described in detail a series of sexual assaults, the officer noted in his report: 'feel we have a very difficult case to prove ... she would never hold up in a court situation. She has said, however, that there was repeated assaults of a sexual nature culminating in sexual intercourse. She has been told about a mischief charge for not telling the truth or blaming an innocent person for something they haven't done. She sticks to her story.' Constable Griffith discussed the interview with Ms. Dempsey who said she would now have to re-evaluate the foster home and would have to go back and see the suspect and his wife. The officer told her he had regular time off and would be unable to proceed with his investigation until late in the next week.

R.C.M. Police policy contained in bulletin number OM-333, dated January 20, 1987[150] required that certain matters be reported to the St. John's subdivision. It stated in part:

> 'Sexual Offences Against Children (under 18 years) - Reporting of these offences will be limited to following categories:
>
> 1. sexual intercourse under 14 years.
>
> 2. incest
>
> 3. high profile case where professional person commits sexual assualt *(sic)* i.e. doctor, clergy, dentist, school teacher, custodian(s) of foster home or day care centre, etc.

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[150] Exhibit C-0479.

> NOTE: A report via message format outlined IV.E.1.b.3. will be sufficient unless criminal operations require request follow-up via C-237.'

Sergeant Hamlyn provided in a telex to headquarters on August 30 a brief outline of the events to date. It stated:

> 'Complaint received from Marilyn Campbell of the Department of Social Services, Kelligrews, Nfld. On 88-07-29 requesting general information and possible assistance in speaking to an unidentified female who had made an allegation of sexual assault to their office. The unidentified female was at the time of the alleged offence, 16-17 years old and in the care of a foster home. She left the home in 1986 and has since lived with her natural father in Bonavista, Nfld.
>
> The complainant, Cynthia Durdle, was reluctant to see the police about the matter but was convinced by social services to come forward. A statement was provided to this office on 88-08-17 concerning the allegation. Foster parent is [the accused], [...], [...], Nfld. The assaults started as fondling and increased to forcible oral sex and one attempt at intercourse. Matter is presently being investigated and suspect will be interviewed.
>
> Incident reported to division HQ as per requirement of B Div OM bulletin OM333. Possible high profile case involving foster parent. Please advise if further report required.'

No further report was requested by headquarters. The sending of this telex was the only step taken by the R.C.M. Police following the August 17 interview of Ms. Durdle until the afternoon of September 6 when

Constable Griffith went to the foster-home and interviewed the suspect's wife. He made arrangements to have the suspect and his wife attend the R.C.M. Police Holyrood office at 10:00 A.M. the next day but that appointment was not kept. After Griffith had left the home the foster-mother talked to Trudi Butt who told her she had been sexually involved with the foster-father for a year. When the father returned home he was confronted by his wife, left the house, and did not return that night.

The next day Trudi left the house in the early afternoon and she was seen shortly thereafter with the foster-father in a nearby remote area. The foster-mother drove to the area and saw Trudi with her husband in a vehicle. Enraged, she took a rock and smashed the windows in the vehicle before her husband drove away.

The R.C.M. Police were notified and a search began in the late afternoon. A helicopter was called to assist. By early evening Trudi Butt, age fifteen, was dead.

A judicial inquiry held in February and March, 1989 concluded that her death was caused by drowning 'attributable to suicide'. Evidence indicated she had fallen fifty feet from a cliff into the ocean. The foster-father testified at the inquiry that he and Trudi had been hiding in the woods and that the girl was despondent and talked of suicide. When the helicopter passed overhead she ran from the trees and jumped off the cliff. When he reached the water, he testified, she was dead.

Later that night he was arrested by Constable Griffith and charged with sexual assault on Ms. Durdle. In February 1990 he was convicted of that offence and sentenced to a term of two years imprisonment.

When he testified before the commission Constable Griffith had been promoted to Corporal and was in charge of the detachment in Roddickton, Newfoundland. He had joined the R.C.M. Police in 1972 and been transferred to the Holyrood detachment from Alberta just days before he was assigned the Durdle investigation. Before the commission he was asked about the delay in his investigation. He said that following his interview of Ms. Durdle on August 17 it would have been preferable to finish his investigation but other matters intervened which took priority. These included investigations of theft, fire at an abandoned cabin, traffic detail and office work relating to on-going files. He said that there is no real list of priority in relation to files or offences and he simply did not have the time to interview the suspect.

Sergeant Douglas Murray Hamlyn had been posted as unit commander at the Holyrood detachment on June 30, 1988. Since 1982 he had been commanding another small detachment at Ferryland, not far from Holyrood. A twenty-five year veteran with the R.C.M. Police, Sergeant Hamlyn was personally involved in some aspects of the investigation. He spoke to Ms. Dempsey on August 23 about the concerns the social worker had for the two girls then living in the home. The Sergeant advised her that the detachment had other cases to work on and if the social worker felt she had to return to the suspects' home alone, she should do it. He said the role of the R.C.M. Police was to investigate the complaint from Ms. Durdle and it was the responsibility of social services to check on the welfare of the children then in the foster home. He testified that as the alleged victim, Ms. Durdle, was not in any danger and was away from that environment the case was not treated as an 'ongoing problem' in that urgent action had to be taken. 'The investigation would be done when the time was available to us', Sergeant Hamlyn testified. He said that if the same circumstances arose again he would handle it in the same way.

Superintendent Emerson Havelock Kaiser, officer in charge, Criminal Operations Branch, "B" Division reviewed the file and listened to the testimony of Corporal Griffith and Sergeant Hamlyn. He said he could not agree with the steps that were taken by his officers. 'There is no way I can conclude that our response was as timely and appropriate as it should have been. Prudence would caution me that the other people in that home are at risk and, real or not, the potential was there and those factors would have driven me to act with much greater haste'. He said the timeliness and reasonableness of the response by the investigator did not meet the test of then existing R.C.M. Police policy. As a result of this case new policies have been issued by Superintendent Kaiser.

Karen Alexander told the commission that the death of Trudi Butt also brought about a change of policy within Social Services. Now, if an allegation of past sexual abuse is made against a foster-parent, any foster-children presently in that home are immediately removed.

One other fact should be noted in relation to this matter. Following the public testimony of the R.C.M. Police officers, twenty-one year old Tammy Butt, the elder sister of Trudi and Marlene, contacted the commission. On June 12, 1990 she gave disturbing evidence about events which took place shortly after her sister's death. Ms. Butt said social workers Ethel Dempsey and Marilyn Campbell asked to speak with her in the privacy of an office in the funeral home. After asking how Tammy and Marlene were getting along, Ms. Dempsey said that she and Ms. Campbell were in trouble because they had been instructed by their superior to remove the Butt sisters from the foster-home and had failed to do so because they thought there was no danger. Ms. Butt said she was greatly upset by this statement. She spoke to another social worker in Deer Lake and then made a special trip to Kelligrews in September 1989 to attend a pre-arranged meeting with Ethel Dempsey to further discuss the matter. Ms. Dempsey did not come to work that day. Ms. Butt then took her case to the Minister of Justice, Paul Dicks, and the Minister of Social Services, John Efford, who advised her that they could not comment since the case might be examined by the Royal Commission.

It should be noted that Ms. Dempsey was invited to appear before the commission, but declined. As commission policy was not to subpoena unwilling witnesses the matter of her evidence was not pursued.

Ms. Karen Alexander detailed all steps taken by social services in the case and produced a full report she had done for the director of child welfare shortly after Trudi Butt's death. In addition, Samuel Cyril Atkins, formerly district manager, Kelligrews district office, until his retirement on 31 March 1989, testified. There is no indication from their evidence or the reports examined by the commission that anyone in authority at social services instructed Ms. Dempsey or Ms. Campbell to remove the Butt girls from the foster-home. Unfortunately Tammy Butt still has no explanation about the statement she so vividly recalls being made to her at the time of her sister's funeral.

This case highlights the necessity for clear guidelines in situations where police and social services responsibilities overlap. Children in foster-homes are under the care of the director of child welfare. When a criminal act is alleged to have taken place in a foster-home against a foster-child the police must investigate and social services must be notified. Each has a mandate to fulfil and every effort made to ensure responses are coordinated. A social worker should never be placed in the position of having to confront alone a suspect with an allegation of crime. A police officer should be present if only to prevent a possible breach of the peace.

While every effort was made to protect the identity of Cynthia Durdle before the commission she decided she wished to testify and did give evidence on June 1, 1990. On that day in suburban St. John's, twenty-three year old Kimberley Somerton watched her television set as Ms. Durdle gave evidence and the next day she phoned the commission office. She had her own story to tell about the R.C.M. Police Holyrood detachment.

On August 16, 1985 a social worker at the Kelligrews office had called the Holyrood detachment and reported that the parents of a three-year old girl suspected the child had been sexually abused by an uncle. Sergeant Noel Nurse, then in charge of the Holyrood detachment, contacted social worker Ethel Dempsey who advised him that a year earlier a foster-child named Kim Somerton had been living in the suspect's home and had run away. There had been 'mention of a possible sexual thing' between the girl and the foster-father.

Sergeant Nurse assigned the case to Corporal Bennett with the following instruction:

> 'Tom:
>
> If this offence did take place, the only way (as you know) to prove it would be a confession by [the suspect] because we are dealing with a three (3) year old victim. Maybe we can get G.I.S. to interview Somerton to see if in fact [the suspect] ever made sexual advances towards her before [the suspect] is interviewed. It might be noted Somerton lived there for eleven years.'

Corporal Bennett interviewed the parents of the three year old and contacted the General Investigation Section in St. John's to arrange an interview with Ms. Somerton. On September 3 he interviewed the three-year old with little success. Corporal Bennett's file note suggests that a policewoman should interview the child who was 'reluctant to speak to me'.

Corporal B.A. MacLean of the St. John's General

Investigation Section interviewed Ms. Somerton on September 18 and sent his report together with her statement to the Holyrood office where it was received on September 30. The Somerton statement alleged that she had been sexually assaulted in the foster-home from the time she was nine years old until she was thirteen or fourteen. She said it ceased when she 'kicked him in the privates'.

In his report, Corporal MacLean stated:

> 'Somerton is willing to testify, if necessary, and I feel she will probably be a good witness. She was a bit reluctant to discuss the matter at first, but when she started, she discussed the matter openly.'

At Holyrood, Corporal Bennett was transferred to another detachment and the file given to Constable Michael Ouelette who, in turn, discussed the case with Constable Paulette Delaney. She offered her assistance to interview the young child.

On November 3, Sergeant Nurse instructed Constable Delaney to contact Social Services 'A.S.A.P. + conduct interview at earliest convenience. If Social Services person not available, continue investigation without her'.

Constable Delaney and Ms. Dempsey interviewed the young girl on November 8 at the child's home in the presence of her parents. They used a doll to assist in the interview but were unable to obtain much information. Constable Delaney interviewed the suspect a week later. He denied any sexual involvement with the two girls and signed a consent to take a polygraph test. The officer continued her investigation but was unsuccessful in locating another female foster-child who had once lived in the suspect's home.

On December 9 Sergeant R.D. Russell, together with Constable Delaney, conducted a polygraph test of the suspect. The constable noted in her report the suspect 'was very edgy and kept moving all the time'. The Sergeant provided a written report which concluded '... there were irregularities in the polygram which prevented analysis'.

On December 26 Sergeant Nurse forwarded a report to the St. John's subdivision summarizing the investigation to date. This form of report is standard R.C.M. Police procedure and is reviewed by officers designated as readers at headquarters. If a reader feels further investigation is required or other steps should be taken he brings the matter to the attention of the C.I.B. officer at headquarters. In this case the report was received without comment.

Constable Delaney continued her investigation. On January 17, 1986 she re-interviewed the suspect who once again denied his involvement in any sexual offence. Constable Delaney obtained a further statement from Ms. Somerton on January 30 and reported 'I feel she is being truthful'. Constable Delaney testified before this commission that she was concentrating solely on trying to build a case around the allegation involving the three year old. Sergeant Nurse was likewise concentrating on the infant. In the file he noted to Constable Delaney:

> 'Paulette All we have is Kim Somerton's evidence as you say. If you can get a similar story from the other foster child, we can have a look towards charges.'

Efforts to locate the other foster-child continued without success and on February 18 a further report was sent to headquarters, again with no response.

On April 10, Corporal MacLean advised that Kim Somerton had contacted him regarding the status of the file. Constable Delaney advised 'We still have the file open, but we are at standstill.'

A report to headquarters on April 14 provided little new information but did indicate the suspect might be moving to Toronto and this would be investigated. On May 6 Constable Delaney contacted Ms. Somerton and told her that the suspect had gone to Toronto and said she would be advised of any more updates.

Constable Delaney's final report to headquarters was dated May 12, 1986. It concluded:

> 'Due to the lack of evidence and the age of [the three year old] child, it is felt there is nothing further that can be done on this matter. Based on the forgoing, this file will be concluded at this time.'

Sergeant Nurse added his initials under the words 'Concluded Here'. A reader at headquarters initialled this report and it was filed away. The matter was not brought to the attention of the department of justice.

Following Ms. Somerton's call to the commission the police file was obtained and examined by senior R.C.M. Police officers and commission staff. That the case had been mishandled was readily apparent. To their credit, each officer involved in the investigation voluntarily came before the commission and publicly acknowledged that mistakes had been made.

Constable Delaney-Smith (as she now is) said she was very junior at the time and today she would handle the case differently. 'I definitely would have opened a separate file and viewed Ms. Somerton's statement as a separate case.' She said she focused solely on the case involving the three year old and never thought of proceeding with a charge against the suspect for sexually abusing Ms. Somerton. She said that while she did have sufficient evidence to lay a charge in the Somerton case, it just never occurred to her.

Staff Sergeant Noel Nurse had been the detachment commander at Holyrood from July 1984 to June 1988. Having joined the R.C.M. Police in 1968 he spent a good deal of his career in Newfoundland investigating narcotic cases. At the time of the incident in question he held the rank of Sergeant.

Before the commission, Staff Sergeant Nurse said that upon review of the file he now realized that the information provided by Ms. Somerton should have been pursued as a separate matter. He could offer no explanation why that was not done. 'It obviously slipped passed me', he testified.

Corporal Terrence Norman was the officer designated as a reader at headquarters who reviewed all but the last report from the Holyrood detachment. He testified he reviewed twenty to twenty-five files per day and if he found something in a file that was lacking he would bring it to the attention of the C.I.B. officer at headquarters. He was away on leave at the time the final report was received at headquarters. Another officer who dealt with offences other than those under the Criminal Code in fact, saw the final report. Before the commission Corporal Norman stated that if he had been on duty he did not feel the file would have been concluded without it being brought to the attention of the C.I.B. officer. 'I would like to think I would have done that', he testified.

When this matter came to the attention of the commission the R.C.M. Police re-opened their file and the suspect foster-father was arrested and charged with sexually assaulting Kim Somerton. That matter is still before the court. The man charged is a brother and next-door neighbour of the individual convicted of sexually assaulting Ms. Durdle.

The evidence of Ms. Durdle and Ms. Somerton highlights a more general problem. Ms. Durdle on one occasion travelled for several hours to court only to find out that the case had been adjourned. She was not kept advised about the various steps in the criminal process. Ms. Somerton was left feeling that she had not been believed by the officers. Crown prosecutors and police must ensure that victims of crime are kept fully informed about matters relating to the investigation and the various steps in the court process."

* * *

Chapter VI

Superintendent Kaiser's Position

As a footnote to this account by Mr. Powell the evidence given by Superintendent Emerson Kaiser who in 1986 was assistant officer in charge of the Criminal Operations Branch of "B" Division in St. John's and in 1989 was promoted to superintendent as the criminal operations officer for that division, provided much important information as well as an opinion on the conduct of the Durdle investigation. He was first examined on May 15, 1990 by Miss Burke and dealt with R.C.M. Police principle and practice in the laying of charges in respect of an alleged criminal offence and the division of responsibility between the force and the prosecution, maintaining that a policy instituted in the department of justice by Judge Hyslop and Mr. Flynn, referred to in chapter IV as a change of direction in 1989, had always been in place in the operations of the R.C.M. Police. This question as vexed as any which this commission has had to consider may be found explored in chapter IX below. He was recalled on May 23 and gave evidence led by Mr. Powell about the Holyrood detachment's investigation. He said on this occasion that it was his "absolute opinion" that immediate action should have been taken on August 17, 1988 after Cynthia Durdle's statement had been received. He said "I part company with the decisions made", and commented severely on the lack of any approach to the suspect foster-father until the appointment for interview on September 6. Superintendent Kaiser produced for the commission a bulletin issued in 1987 altering provisions in the R.C.M. Police operational manual under the heading of "reporting requirements".[151] After referring to two situations where reporting to division headquarters was not required, the third item dealt with was as already quoted by Mr. Powell:[152]

> **"3. Sexual Offences Against Children (under 18 years) - Reporting of these offences will be limited to following categories:**
>
> **1. sexual intercourse under 14 years.**
>
> **2. incest**
>
> **3. high profile case where professional person commits sexual assualt *(sic)* i.e. doctor, clergy, dentist, school teacher, custodian(s) of foster home or day care centre, etc.**
>
> **NOTE: A report via message format outlined IV.E.1.b.3. will be sufficient unless criminal operations require/request follow-up via C-237."**

In the meantime Sergeant Douglas Hamlyn, at the time material to the Durdle investigation officer in charge of the Holyrood detachment of the R.C.M. Police, had testified at length on May 22 and 23, examined by Mr. Powell also, and was upset by the strictures of his superior officer. He wished to be called again to testify and answer them, being concerned that out of the multiplicity of documents assembled by the commission staff there was one missing which would justify his detachment's handling of the Durdle complaint: an internal form entitled "transmittal & diary date request" sent by a "reader" at headquarters to Holyrood dated September 2, 1988 and evidently received on September 6. Referring to the Durdle inquiry it read: "no further reporting required here, at this time". On an application to have Sergeant Hamlyn recalled, presented by his counsel Mr. Robert Regular on June 1, 1990, I declined to allow it on grounds set forth in my oral reasons which can be consulted at appendix H. To be brief I was of the opinion that the commission had no jurisdiction to inquire into a question of discipline in the federal force, and that, although at that time it was not so considered, it might well be later if there was a public confrontation between a senior and junior officer.

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[151] Exhibit C-0479.

[152] p.297 *ante*.

Whitbourne 1984

It has been observed that evidence dealing with the policies and practices of the department of social services - only the child welfare division has really been examined - does not disclose an affirmative answer to the key question raised in article II of the terms of reference: was there a policy or practice whereby that department in child welfare matters held its hand in effecting prosecutions of child abusers provided they left the province? Yet a form of suppression untrammelled by any *quid pro quo* was practised by some officials. For instance Mr. Hollett, deputy minister from 1972 to 1980 testified that he had not during his term of office been advised of the Mount Cashel investigation of December 1975 by either George Pope or Frank J. Simms. Pope, as assistant deputy minister at the time, considered that the matter had been disposed of from what Simms had told him, and that there was nothing in it which required a report to the minister. Since Hollett on his own showing, attended the meeting of January 1976 and recalled the presence of Brothers McHugh and Nash, although he did not recollect Sheila Devine's request for names of the boys involved in the investigation, he must have been sorely puzzled by Brother McHugh's assurance that the little difficulty in the orphanage had been satisfactorily settled. He felt that child abuse was not so unusual as to require reports to the minister or deputy minister and that George Pope had to use his own judgement which was clearly the opinion of Pope himself. He told Mr. Chalker in cross-examination that Mount Cashel was very important to the department and that Pope and Simms had a "proven track record".

Simms indeed made a practice of keeping all the affairs of the Christian Brothers in Mount Cashel strictly to himself and in his own hands, and did not see fit to advise the minister, Mr. Brett, to whom by statute he had direct access, about the critical events of December 1975, events without precedent in departmental history. An example of this appetite for concealment was presented by Mr. Powell, as child welfare profile no. 4.[153] What happened in this case was very much in the public eye at the time and no deletions for protection of identity are appropriate.

I am again indebted to Mr. Powell for the following summary of the case of Alonzo Corcoran at the juvenile corrections institution known as the Whitbourne School for Boys in January 1984. It is again reproduced exactly as furnished. It represents Mr. Powell's reflections on evidence he lead on March 23, 26 and 27 before the commission at St. John's earlier in the same year.

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[153] Exhibit C-0358A.

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> "Mrs. Sharron Callahan recalls the night of January 23, 1984 as being "the coldest night of the year". As assistant director of juvenile corrections she was concerned about the welfare of Alonzo Corcoran and Darren Wall, two youths who, that afternoon, had escaped from the Whitbourne School for Boys.
>
> Corcoran had been in the institution for thirteen days and while only four feet, ten inches tall and weighing ninety pounds he was just two weeks short of his seventeenth birthday.
>
> At 1:30 in the afternoon, the boys had been seen running from the institution by a teacher who reported the incident to the juvenile corrections officer in charge. Three staff members commenced an immediate search in the rugged surrounding area. Local R.C.M. Police were notified and officers kept an eye open for the boys while making regular patrols in the area. Whitbourne staff called off the search at about 9:00 p.m..
>
> The following morning Corcoran's body was found beside railway tracks three and one half miles east of Whitbourne. He was dressed in light clothing and death was caused by hypothermia due to exposure.
>
> The Whitbourne institution was well known to Mrs. Callahan. Two months earlier, on November 10, 1983, she had been so concerned about matters at the institution that she had taken it upon herself to write a

four page memorandum to her superior, Frank J. Simms, the director of child welfare and juvenile corrections. She addressed several areas of concern. Included in these were staff attitudes and overtime costs.

To quote Mrs. Callahan:

> 'Sufficient to say, I think, is that the Whitbourne School for Boys exists as a community unto itself and that even God himself could not break down the walls of this institution.'

Earlier, on October 7, 1983, Simms himself had addressed the question of overtime costs at Whitbourne in a directive to John Legge, administrator. The directive included:

> 'The previous stated policy of apprehending runaways is being reaffirmed and that the search period will not exceed three hours unless special circumstances exist and these are first cleared through the administrator.'

Mrs. Callahan told the commission she was speechless when her memorandum was returned to her by Simms a few days later with a brief note written across it indicating that primary attention should be given to Whitbourne detention, overtime and sick leave. She felt all matters raised in her memorandum were important and required attention.

The minister of social services in January 1984, was Thomas V.P. Hickey who had been appointed to that portfolio in March 1979. A member of the House of Assembly since 1966, Hickey held several cabinet portfolios during his career.

Hickey testified before this commission that he was advised of Corcoran's death on January 24, 1984 by his deputy minister, Gilbert Pike, who indicated there were few details available but that an internal investigation was being carried out and that the minister would be kept advised.

On January 30, 1984, a meeting was held in Hickey's office. Present with the minister were Simms, Pike, Mrs. Callahan, assistant deputy minister George Pope and Larry Power special co-ordinator, juvenile corrections. Mrs. Callahan kept brief notes at the meeting.[154] Items she noted included: a number of media calls, some for the second time; 'overtime cut backs, boy might have been saved'; and the fact that it was not good to take initiative after Corcoran's death.

New federal legislation, the *Young Offenders Act*, was soon to come into effect. The group discussed closing and renovating Whitbourne and reopening it as a young offender closed unit.

The minister told this commission that he was very upset when he heard at this meeting that there had been one hundred and twenty four runaways from Whitbourne the previous year and he wanted the institution closed immediately.

Mrs. Callahan confirmed that the minister was angry and wanted Whitbourne shut down. In her notes she recorded 'guise of YOA'. She said this related to a discussion that had taken place at the meeting whereby Whitbourne could be closed and this could be achieved under the guise of changes required by the *Young Offenders Act*.

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[154] Exhibit C-0357.

On February 3, 1984 Hickey held a press conference in company with senior staff members including Simms and Mrs. Callahan. He testified he felt he had been given all relevant information by his staff and he assured the public that no responsibility or blame lay within his department for the death of Corcoran. A press release issued at the time referred to the *Young Offenders Act* and the fact that Whitbourne would become a closed custody facility.

That night, Hickey testified, he received an anonymous telephone call from someone whom he believed to be a Whitbourne employee stating that he (Hickey) did not have all the facts at his press conference and that he should look at 'the Callahan report'. Hickey said he knew nothing of this report and following repeated requests of his staff he finally saw it five or six days later. He said he was shocked by its content and felt it had been deliberately withheld from him by his staff.

On March 14, 1984 Ronald J. Richards, associate deputy attorney general and director of public prosecutions directed that an inquiry be held pursuant to Part III of the *Summary Proceedings Act* into the cause and circumstances surrounding the death of Alonzo Corcoran. Provincial Court Judge G.J. Barnable presided at this Judicial Inquiry which was held in the town of Whitbourne on five days throughout the summer of 1984.

Simms was subpoenaed to attend on the afternoon of May 25, 1985 and to bring with him the Alonzo Corcoran file. Following his appearance Simms wrote a one page handwritten note to Mrs. Callahan[155] stating that the file he took did not contain much of Corcoran's personal history. He added:

> 'Would you please recheck the record for these records. If you find them, they are to be copied and forwarded to Judge Barnable. Copies of personal records (Court orders, social histories) in the attached files should also be made and sent to the Judge. Our records on policy relating to O/T should not be forwarded.
>
> I will call you from Bonavista on Monday.'

The issue of providing the inquiry with overtime policy statements relating to searches had previously been discussed between Callahan and Simms. Mrs. Callahan testified she felt it would be of concern to Judge Barnable as some Whitbourne staff members had commented that the overtime policy had contributed to Corcoran's death. She said Simms disagreed and felt the control of overtime expense should be kept separate and not given to the Inquiry.

Mrs. Callahan said she spoke to Simms on the Monday following when he called from Bonavista. They again discussed the overtime policy. She testified his position was that within the guidelines under the existing policy, the staff had the ability to search all night for the boy.

Despite Simms' concern Judge Barnable did receive the department directive on overtime and search procedure when, on June 5, 1984, Whitbourne program co-ordinator Brian Miller sent them by mail to the Judge. Mrs. Callahan's memorandum never did come to the Judge's attention.

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[155] Exhibit C-0363.

The inquiry concluded on October 5, 1984 and Judge Barnable completed his report which was sent to Ronald J. Richards on January 16, 1985.[156]

In his report Judge Barnable stated:

> 'By 8:15 p.m., the two searchers were physically discomforted by their half hour trek along the tracks. They were overcome by a sense of futility. They knew they had done as much as was expected of them. They knew of the overtime restrictions. Mr. Reid had passed one three hour allotment at 6:00 p.m.. Mr. Gosse completed three hours of overtime at 7:45 p.m.. By straying too far from the guidelines they ran the risk of not being paid for the time spent.
>
> Although the search was inadequate, the two searchers cannot be personally faulted. They, and the police, had done all that was expected of them.
>
> But not enough was expected of them.
>
> I have examined all the papers and policies I referred to in the Inquiry. I have listened and thought about all the testimony. Nowhere can I find evidence that the question of the safety of escapees was ever adequately addressed.'

His Honour went on to state:

> 'Not to have addressed this problem amounts to negligence on the part of the public authority responsible for the care of these boys.'

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[156] Exhibit C-0366.

On January 25, 1985 Robert Hyslop, assistant director of public prosecutions sent a confidential letter to Gilbert Pike enclosing the findings and recommendations of Judge Barnable. Hyslop wrote:[157]

> 'In view of the findings of His Honour and the comments contained in those findings, it will probably be necessary for you to consult with your Minister and your officials as soon as possible.
>
> Our Minister has not made a decision to release the report publicly. In all likelihood, since the report deals with an aspect of public safety, I would anticipate that it will be released in due coure. *(sic)*
>
> I would like to have any input from you or your officials before I approach the Minister.'

Hickey testified he was told by Pike in early February 1985 that the report had been received. Pike said he had not read it but George Pope had. Hickey said Pope told him that the report was "not all that bad" but did comment unfavourably on the department's record-keeping and recommended that a social worker should be attached to Whitbourne. Hickey testified he was not told the report made any reference to negligence. He said he was not given a copy of the report at that time.

A provincial election was held on April 2, 1985 and on April 24 the report was released to the public. On that same day there was a Cabinet shuffle and Hickey was replaced as Minister of Social Services by Charles Brett.

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[157] Exhibit C-0364, p.113.

Shortly thereafter Hickey made certain public statements which resulted in a lawsuit by Simms. That matter is still before the courts.

While the disturbing evidence relating to these events does not address the issue of response to allegations of physical or sexual abuse of children, it is capable of indicating an attitude of senior civil servants when a government run institution is under scrutiny. The minister testified certain information was withheld from him and, as a result, he gave misleading information to the public. There is evidence to suggest that not all relevant evidence was readily given to Judge Barnable during his conduct of the judicial inquiry into Corcoran's death.

If such are the facts, steps should be taken to ensure that ministers are given all information - positive or negative - regarding matters within their departments. As well, Judges appointed to conduct judicial inquiries are required to make findings of fact and provide the government with recommendations. That mandate can only be fulfilled if public servants provide to the Judge all information relating to the matter in issue. Relevance is a matter to be determined by the Judge, not the civil service."

* * *

With every word of this narrative and observations which occur at its end I am in close agreement and wish to add only some brief observations. The circumstances of Alonzo

Corcoran's life at home with his parents, brothers and a sister need not be explored other than to say that the children owed their lives to the child welfare division and their welfare officers beginning in January 1971 when they were removed from a house without heat and taken into care. The division kept in the closest touch with this family. Alonzo spent short periods of residence in Mount Cashel as a ward of the director from 1979 - 1980 and again from 1980 - 1982 on both occasions being discharged at his own request; he was unfavourably reported upon by Brother Bucher. He was the subject of two non-ward agreements entered into by his mother and two wardship proceedings instituted by the director and was made a temporary delinquent ward at the tragically early age of ten. In his sixteenth and seventeenth years he turned to breaking, entering and theft which ended in his being made a permanent delinquent ward and confinement to the Whitbourne School for Boys.

It is not necessary to reproduce the unsavoury details of this institution described by Mrs. Callahan in the report alluded to by Mr. Powell. Suffice it to say that if her strictures were justified - and they were not challenged - the staff were generally speaking not of high quality and the classification of "juvenile guidance officers" was singularly inappropriate. Mrs. Callahan said that they spent most of their time complaining about their employment contract with the government. It seems obvious that they exploited the overtime issue by effectively turning it upside down. Mr. Simms may have been on sounder ground than he apparently felt to be the case on this issue since the custodial staff took the position that they would be deprived of overtime pay conducting a search lasting more than three hours, whereas in fact when the administrator authorized a search of longer duration there was no such difficulty. There was nothing in the directive on the subject which would have deprived the administrator of the right to order overtime payments retroactively after a search was over on any reasonable application. But Simms felt, rightly as it turned out, that the question of overtime would be misrepresented and he decided to withhold information on the subject from the investigating judge. As it turned out the judge was informed at the inquiry of its significance by the administrator of the school. But the minister of the department was left to find out from an anonymous telephone caller that his statement to the press declaring that his department was free from blame could not be supported by the facts.

Frank J. Simms testified on April 5, 1990 mainly in connection with the events which led to the disappearance of the originals of Robert Bradbury's report of October 23, 1975[158] and Stead Crawford's report of November 8, 1982.[159] But the main thrust of Mr. George Horan's cross-examination for the government was directed to the director's performance as a witness at Judge Barnable's inquiry in 1984. Simms' first explanation as to why he had not disclosed to the judge the details of the overtime directive was that the subpoena issued to him had not required anything other than reports about Corcoran. Eventually he said that he knew that the judge would be advised of the overtime policy by the administrator of the boys' home. On his second attendance at the judicial inquiry he had produced the report of W.T. McGrath, executive director of the Canadian Criminology and Corrections Association dated November 10, 1970 and entitled "Newfoundland Training Schools Study" which appears to have been submitted only in draft "for discussion purposes only".[160] This was in response to a much more comprehensive inquiry by Judge Barnable seeking all reports extant about Whitbourne. Why had he not also provided Sharron Callahan's report of November 10, 1983?[161] On this document, tendered in form by his assistant director of juvenile corrections, he had written slantwise across the top a note dated four days later as described above by Mr. Powell. After considerable fencing Mr. Simms said that the only explanation possible was that he had overlooked producing it. If one were looking at the document alone one might conclude that he had also overlooked minuting it to the assistant deputy minister George Pope. But Mr. Simms here said that he had provided Mr. Pope with a copy although he agreed with my suggestion that the normal procedure was to forward the original to higher authority. Simms may not have wished Pope to read his note to Mrs. Callahan. This is one explanation. The other is that he did not in fact send a copy to Pope and, since the latter had been called to testify to the commission six weeks before, his recollection of the matter was not explored. It is even less likely that Simms would have wanted Judge Barnable to read the note across the top of Mrs. Callahan's timely warning about the state of affairs in the Whitbourne School for Boys.

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[158] Exhibit C-0049.

[159] Exhibit C-0294, pp. 34 - 36.

Grace was bestowed on the last hours of sixteen-year old Alonzo Corcoran's wasted life. His body was found wrapped in the coat of his fellow fugitive who had resisted the fatal urge to sleep.

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[160] Exhibit C-0364, p.58.

[161] Exhibit C-0361.

Sampling Other Profiles

As one might expect the commission's public hearings tempted one or two young people to tell stories of physical and sexual abuse which on investigation proved to be fictitious. Such was the case in criminal investigation profiles no. 1 and 2, the first occurring in 1989 and the second in 1990, perhaps the result of motivation by the commission's proceedings, and peripherally in the case of child welfare profile no. 14 described as a "Group Home Complaint Regarding Two School Teachers" also relating to the years 1989 and 1990. Mr. Ronald Tizzard testified to the commission on June 4, 1990. Formerly a director of Talbot House, a detoxification centre in St. John's, and at present a counsellor for the Alcohol and Drug Dependency Commission, beginning in 1971 he had enjoyed varied experience in child welfare work. In 1989 he was chairman of the St. Francis Foundation board operating a group home, which was conducted for the benefit of unmanageable boys with a normal capacity of five residents, all of them wards of the director of child welfare. At the time of Tizzard's testimony a staff of six full-time and three part-time workers provided care round the clock. At one time there were ten residents being looked after and from time to time the division would place boys for short periods pending placement in another environment.

One day in May 1989 the boy who was the subject of Mr. Tizzard's complaint came home from school with a bruise on his right upper arm which required and received no medical attention. The story he told was that during lunch hour at school he and his friends had been playing "piggy back tag", and that a teacher unknown to him had compelled him to leave the playground by squeezing his arm and shaking him. The teacher's reason was, as the complainant admitted, that younger children were at play in the vicinity. This statement was amplified by the teacher involved who said that the complainant and his companions were playing roughly and had hurt one or two of the smaller children, whereas he had taken the action complained of, using only necessary constraint. His request to the boy and his companions to stop their rough play had been received with abusive language. The social worker concerned with the group home reported the incident to the superintendent of the Roman Catholic School Board - Mr. William Whelan who testified earlier to the commission - who made inquiries of the principal of the school in question, a Christian Brother. The principal reported his colleague's version of the incident and his belief that the latter had "acted in a responsible and reasonable manner". In the meantime the boy had been suspended for three days for refusing to apologize to the teacher he had verbally abused. The summer months went by and, evidently exasperated, Mr. Tizzard wrote the following letter[162] to Social Services, reproduced in the edited form in which it was admitted into evidence:

> **"I am writing you at this time, on behalf of the Board, to express great concern about the fact that it has now been almost four months since the incident, with no satisfactory conclusion having been reached. As the Board sees it, this is due to the virtual inaction of your Department in this matter.**
>
> **A worker attended a meeting at the school on May,**

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[162] Exhibit C-0532.

31st.. The school did not fully co-operate, from the Department's point of view. A letter was written to the R.C. School Board, dated June 8th, 1989, requesting their intervention in solliciting *(sic)* greater co-operation from the school. To date they have not responded to the June 8th letter. For three months, this matter laid dormant; June, July, August. The Home needs to know how to respond to [name deleted] concerning this matter.

Your Department called the School Board at the end of August, Mr. [name deleted]'s Assistant, as I understand it relayed the message that the Board concurred with the action/inaction taken by the school. Two, almost three weeks later, there is no indication that your Department has any decisive plan of action.

Last week, Mr. [name deleted], the Home Co-ordinator, reported to your Department that he had received information that the teacher in question has been involved previously in similar incident or incidents; that he has a letter on file warning of disciplinary action should there be further occurances *(sic)*. A week later, we understand that [name deleted]'s file is on the way to Mr. [name deleted]'s desk. I would have thought that a Worker would be out knocking on Mr. [name deleted]'s door at the School Board, trying to confirm the information received, the day after it was received.

The Board is most perplexed at the latitude given the school and the School Board in this matter; and would like to know what, if anything, the Department intends to do in this matter to bring it to some conclusion, soon.

This incident and information around it is crying out for investigation, and the Department owes [name deleted], the teacher and all concerned some concerted action. The Board would appreciate a response at your earliest convenience."

A copy of this somewhat hectoring letter was sent to the minister, the Honourable John Efford, who, according to the witness, was upset by the incident and expressed his concern over the telephone. But during the apparent delay over the summer months the decision of the school principal and that of the Roman Catholic School Board had been expressed as final and this blunt conclusion had not apparently been communicated to the chairman of the foundation. In October a full blown case conference was held at the St. John's West office of the department attended by the superintendent of the school board, the principal of the school and four officers of the department, and to which Mr. Tizzard and the co-ordinator of the group home were invited but declined to attend. The social worker who had throughout made representations on behalf of the foundation in reporting this conference said: "it was recommended at this time by the author that a referral to the R.N.C. should be made. This was later decided against, no explanation was given as to why". None the less the author was instructed to pursue the matter and she interviewed a number of people including children who had been involved in the incident. Whatever decision had been made about the involvement of the Constabulary not being necessary, Constable Zita Dalton did in fact interview the young complainant, not only in relation to the playground incident but about an allegation of sexual abuse by another teacher at his school, like the principal also a Christian Brother, of which he had complained to an educational therapist of the Child Abuse Treatment and Prevention Unit. Finally in February the social worker was advised by Constable Dalton "that this was considered a summary offence, therefore the statute of limitations applied after a six month period". A high level of cooperation was evidently reached in allaying this storm in a tea-cup provoked by the playground activities of a teacher doing his best, and an unrelated complaint of sexual abuse by a child against another teacher. The file discloses no further action, perhaps owing to the child having claimed that he would deny making the allegations if he were called upon to repeat them.[163]

* * *

It is inevitable that various child welfare profiles prepared for the commission, with or without records of criminal investigation and offences should deal with difficulties encountered by social workers and police investigators, perhaps complicated by errors in procedure, and wards of the director coming from families where parents have been irresponsibly profilic when their material circumstances and emotional difficulties have rendered them likely to endanger the welfare of their children. I have already commented upon the invariable presence of alcoholism and hostility to children of a previous union. As in all aspects of public administration a great majority of procedures are free of trouble and the conduct of the administrators correct. There is therefore danger that a commission of inquiry should convey an unbalanced view of the function under examination. Yet it is in the unfavourable circumstances that seem to predominate that policy and procedures can be most effectively tested. For instance, child welfare profile no. 1[164] deals with the wardship proceedings in the case of Shane Michael Earle and leads to the evidence given by the

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[163] Exhibit C-0532.

[164] Exhibit C-0281A.

Honourable Madam Justice Noonan on February 20, 1990 in which the following exchange took place between her and Mr. Powell:

> **"Mr. Powell:**
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> **... I make reference if I might to Exhibit C0281A, Mr. Secretary, which is the profile, Mr. Commissioner on the Shane Earle wardship proceeding. I have provided you with a copy of this the other day.**
>
> **Madam Justice Noonan:**
>
> **Yes, you did.**
>
> **Q. And you have had a chance to look through it?**
>
> **A. I have.**
>
> **Q. I ask, at page 8 - we use the numbers at the bottom of the page for the purpose - this is a letter from Mr. Simms to Miss Cahill on May 26, 1975, re Shane Earle in care of Mount Cashel saying "our file indicates that the temporary order of wardship on Shane Earle expired on May 16, 1974, and to date has not been reviewed. Would you please have the worker for the district arrange to have this case reviewed in court at an early date." That's May of 1975, many months before the December of 1975 police investigation, but was it your experience that temporary orders of wardship were not reviewed within the appropriate time? My understanding first of all it could be for one year, is that correct?**

> A. That's correct. A child can be committed to the care of the director of child welfare for a period not exceeding 12 months.
>
> Q. Here is one that is more than a year past that period of time. Was that a usual thing or not?
>
> A. No it wasn't. I found it very frustrating.
>
> Q. How could something like that happen? From your experience how would these things happen?
>
> A. Other than the internal organization in the Department of social services, I mean I did not keep a K.I.V. system on these matters because I didn't know what the situation was going to be. I didn't see that as my duty. I expected the social worker who was dealing with the case to bring forward the file in the appropriate length of time to have the matter reviewed by the court. The social workers were quite aware that the matters had to be reviewed within 12 months. Quite frequently, the cases weren't. You might say that the situation has improved considerably at the moment, and they are being reviewed promptly."

For those unfamiliar with civil service jargon "K.I.V." means "keep in view" and refers to a system of retrieval whereby an officer asks his or her secretary to bring forward the file on a certain date for reviewing the matter in question. The next folio in the file after Mr. Simms' letter is one by a social worker countersigned by Mrs. Sharron Callahan, her supervisor, dated September 1975 to William Earle advising him that temporary wardship of his son Shane is due for renewal, and that several attempts to contact him have been unsuccessful. The explanation for this delay appears to have been the fact that Miss Cahill had relinquished her position as supervisor at Harvey Road and been succeeded after a period of some weeks by Mrs. Callahan. Then on October 30 the same social worker advised the director that William Earle was working as a security guard at the Western Memorial Hospital in Corner Brook, concluding "I have been unable to obtain an address for him. Trusting this is satisfactory to you". On November 14 Mr. William Fox writing for Mr. Simms wrote to the district administrator of the department at Corner Brook saying *inter alia* "we have been unsuccessful in locating either of the boy's parents to arrange a review of Wardship, but we have now been advised that Mr. William Earle is employed as a security guard at the Western Memorial Hospital in Corner Brook."

After Shane was apprehended on April 4, 1973 and placed in Mount Cashel orphanage a judicial inquiry under section 11 of the *Child Welfare Act, 1972* took place in the following month before Judge C.L. Roberts. Two orders were signed, the first dated May 10, 1973 which stated that the inquiry occurred on May 8 and ordered that the child be committed "temporary" to the care and custody of the director of child welfare for one year from May 10, 1973. The second order was dated May 16, 1973, or roughly a week later, and stated that the inquiry occurred on an indecipherable date in May 1973 and using the same language, including the word "temporary" in spite of the printed invitation to insert the word "temporarily", directed wardship for one year as from May 9, 1973. Buttressed by two orders applied for by the same welfare officer and proceeding from the same judge, Shane Earle's status was secure to at least May 9, 1974 after which he might be said for somewhat over eighteen months to be legally in limbo, although physically at Mount Cashel.

Into this muddle unauthorized action intervened when Shane left the orphanage on December 7, 1975 under the auspices, as will be recalled, of Chesley Riche, going to his mother's flat at 360 Duckworth Street, St. John's where he stayed until April 7, 1976. As a result of an order made by Judge M.R. Reid sitting in St. John's Family Court on March 18 of that year he became a permanent ward of the director and on April 7 a resident of Mount Cashel for the next ten years.

* * *

I am indebted to Mr. Day, co-counsel to the commission, for a compendious review of all the child welfare profiles including those which had a concomitant investigation by the police. These may be found combined in appendix J in their totality but in the meantime I reproduce as written his summary of child welfare and criminal investigation profile no. 4[165] upon which a comment will be made.

> "During investigation of an allegation received on 16 February 1978 that a father of four children had publicly exposed himself, the Constabulary learned from the father's mother-in-law and three of his four children (girls born in 1961 and in 1972, and a boy born in 1963) that the father was mistreating the three children who, in turn, were concerned the father was mistreating the fourth child (a boy born in 1971). Unable to secure satisfactory evidence identifying the

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[165] Exhibit C-0460.

father as the exhibitionist, the Constabulary's investigative report dated 09 March 1978 did not recommend charging the father but stated that 'something should be done with regards to his children.' The report was received on or shortly after 16 March 1978 by Justice which, on 21 March 1978, copied the Director and promised the Constabulary a reply following what Justice described as separate Social Services' investigation and (perhaps) a case conference between Justice and Social Services 'to determine a plan which we believe to be in the best interests of the children.'

There is no evidence of such an investigation, case conference or a response by Justice to the Constabulary. However, the Director's District representatives apprehended the two younger children while the two older children took up temporary residence with relatives. On 08 August 1978, the youngest child was committed temporarily (to 30 June 1979) and the next-to-youngest child was committed permanently, to the Director.

The child permanently committed, who in May 1979 was hospitalized for treatment of psychiatric problems occasioned by his father's mistreatment of him in the home, eventually visited his parents occasionally but remained committed to the Director's care to age 16 years in 1979 and afterwards remained in the Director's extended care until 16 March 1983.

The temporary committal of his brother, youngest of the four children, was extended on 08 August 1979 for 12 months by the Unified Family Court Justice, subject to what he described as 'condition' expressed

> in a letter from the Director's District representative to the parents, which both parents had signed. On 15 October 1980, notwithstanding some reservations by a District social worker professionally involved with the family, the Director successfully applied to the Unified Family Court Justice to replace temporary committal of the child with Director's supervision of the child in the child's home.
>
> By now, the oldest child was planning nuptials (that occurred on 28 November 1980) and the second oldest child, living away from home, was visiting from time to time."

The order referred to as proceeding from the Unified Family Court Justice must be considered and it was indeed made by a judge of the Trial Division of the Supreme Court of Newfoundland as was reported by Mrs. Noonan to the director of child welfare in October 1980. The order on the familiar form, now re-issued to reflect the currency of the *Child Welfare Act, 1972*, as form 8-608, awards the youngest child to the "temporary care and custody of the parents subject to supervision by the Director of Child Welfare under section 15(1)(b) of the child welfare act". This part of the order preceded by a finding which is derived from the printed portion of the order as follows: "I DO FIND the said child to be a neglected child within the meaning of The Child Welfare Act, 1972, the Act No. 37 of 1972". The material portions of section 15 as they then stood are set out for convenience thus:

> **"15.(1) Where it appears to a Judge that the public interest and the interests of a child declared by him to be a neglected child or of any**

> **child against whom an offence has been committed may be best served thereby, the Judge may, subject to subsection (7) of Section 12, make an order**
>
> **(a) that the child be returned to his parents or guardians or other person in whose care he may be, subject to supervision by the Director;**
>
> **(b) that the child be committed temporarily or permanently to the care and custody of some suitable person, subject to supervision by the Director; or**
>
> **(c) that, subject to subsection (3), the child be committed temporarily or permanently to the care and custody of the Director, who in his discretion may order that the child be placed in a foster home, training school or other institution which has been approved by the Minister for the care of delinquent or neglected children."**

Paragraph (b), which is operative in the order of the learned judge, refers to "some suitable person" as the temporary custodian and one may speculate that the paragraph intended to be cited was (a) which does provide for a return of the child in question to his parents. But if this is mere inadvertence one must be concerned about any result which would classify parents responsible for the neglect of a child as "suitable" persons to exert care and custody, then perhaps question the desirability of making an order under (a) without some proviso that the designated custodian under the supervision of the director would at least be someone not responsible for the neglect, or, as it became a year later, the need for protection.

*　　　　*　　　　*

Mr. Day's subsequent summary of child welfare and criminal investigation profile no. 18[166] is similarly reproduced.

> "Upon divorcing a father and mother in 1977 a Trial Division Justice granted the father custody of the three children of the family. Two of the children were boys born 12 November 1965 and 23 September 1969. the older boy, born to the mother by another man prior to the marriage (in 1967), had been adopted into the marriage of the father and mother.
>
> Older Boy. As a result of the adoptive father's efforts to discipline the older boy by striking him with a belt the boy left home on 30 March 1978 and went to the residence of his grandmother who brought him on the same day to the Janeway where and when he was admitted, treated and apprehended on behalf of the Director who commenced in St. John's Family Court, but inexplicably did not proceed with, an application for a judicial investigation to have the boy committed to him or made subject to his supervision. Moreover the St. John's Family Court Judge did not press the Director to do so. Instead, the Director placed the boy at Mount Cashel upon his discharge from the Janeway on 07 April 1978 (perhaps on the basis or an Order the St. John's Family Court Judge

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[166] Exhibit C-0497 and Appendix J.

made on or about 24 May 1978 authorizing the Director to detain the boy until the judicial investigation [that never occurred] was completed).

The result of a district social worker's contact with the Constabulary on 04 May 1976 was a criminal investigation by the Constabulary which produced a report dated 23 May 1978 that concluded there were grounds to lay a criminal charge. On 25 May 1978 the Director of Public Prosecutions noted on the report: 'No criminal charges warranted' and on 30 May 1978 a Justice solicitor accordingly notified the Constabulary.

The mother, by now living in Ontario where she remarried on 04 February 1978, learned of the older boy's departure from home and applied to vary the custody Order (made in the 1977 divorce proceeding) to obtain custody of the older boy. In a Judgement granting her application, filed 06 September 1978, a Trial Division Justice described the father's treatment of the boy , albeit recognized as being isolated, as 'a savage attack'. On 23 September 1978 the mother removed the older boy from Mount Cashel and brought him to Ontario to live with her and her second husband.

Younger Boy. On 24 May 1985 the younger boy was brought to the attention of a social worker at the St. John's West District as a result of a telephone call from the boy's school counsellor suggesting that the father was unreasonable in his attempts to discipline the younger boy.

Consequent District inquiries and interviews resulted, on 05 June 1985, in the boy being

> apprehended by a District social worker and placed in a home licensed under subsection 45(2) of The *Child Welfare Act, 1972*, and being committed by Order of the Unified Family Court Justice on 15 August 1985 to the Director until 23 September 1985 when the younger boy would cease to be a 'child' as defined by subparagraph 2(a) of the Act. Commencing 23 September 1985, the boy lived in the Director's extended care until 01 July 1989. Meantime, the boy had no contact with his father or his father's cohabitant."

The words used by the learned judge of the Trial Division in the custody application - the Honourable Mr. Justice Goodridge, now Chief Justice of Newfoundland - must be quoted, being of general application:[167]

> **"While I am prepared to accept that the beating which the respondent administered to his son was out of character it was clearly of a savage nature. Despite his assurance, I could never be certain that it would not be repeated.**
>
> **A person may have no intention of doing such an act. Such acts are performed by people who for the moment have lost their temper and their reason. The best of intentions may readily yield to an impulse born in a moment of anger."**

No better description of the danger of administering discipline before anger cools can be easily conjured up.

* * *

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[167] Exhibit C-0497, p.56.

As a final sample of the work of Mr. Day and Mr. Orser investigating and reporting upon the files of the department of social services and the department of justice, and as an example of the elaborate notes with which they prefaced many of the profiles in all three categories - as did Mr. Powell, Miss Burke, and Mr. Horne to a lesser extent - the introduction to child welfare and criminal investigation profile no. 17[168] is reproduced exactly as offered in evidence. It will be observed that no attempt has been made to edit the text of the documents quoted. Numbers appearing in square brackets, e.g. [055], refer to subsequent pages in the profile volume containing the documents on which the prefatory note is based.

> "The issues in this proposed Exhibit are the responses of
>
> 1. Health Care professionals ("Health Care"),
> 2. The Newfoundland Constabulary ("N.C."),
> 3. Department of Justice, Government of Newfoundland and Labrador ("Justice"),
>
> and
>
> 4. Department of Social Services ("Social Services"),
>
> to a complaint that a ten-year-old girl, placed from her parents to Exon House by the Director of Child Welfare ("Director"), was injured there.
>
> Basic Facts
>
> A mentally-challenged girl, born in 1968 ("Child"), was put in care of the Director by her Mother pursuant to Non-Ward Agreement she made with the Director on 06 October 1971.

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[168] Exhibit C-0496.

The next day, the Child was placed on the Director's behalf in Exon House, St. John's, Newfoundland. On 26 March 1979, while continuing to reside at Exon House, she was admitted to Dr. Charles A. Janeway Child Health Centre ("Janeway") presenting with several unexplained injuries. The injuries were treated at the Janeway and the Child returned on 10 April 1979 to Exon House where she continued to reside until 01 February 1988. An investigation by N.C. did not result in any criminal charges. Commission Investigators did not locate any evidence of an internal inquiry at Exon House.

The Child

The child, born 05 November 1968 [001.], joined her Mother, born 1937 and Father, eight years younger than the mother, and two male children, in an urban Newfoundland community. [005.]

The family lived in a clean, tidy bungalow consisting of three rooms: a bedroom, a kitchen and a porch. The bungalow was not connected to either urban water or sewage services. [002;024.]

The Child's Father, who frequently abused alcohol, was infrequently employed. [002;012.]

The Mother had experienced a seizure in the fourth month of her pregnancy for the Child. [007.]

Within thirty months following birth of the Child, the Mother was unable to cope with her; partly because of the Mother's increasingly-precarious marriage, and partly due to the Child's strenuous behaviour. [012 to 013.]

A medical doctor ("Doctor 1"), practising in the community where the Child resided recorded in November 1969 [010.] that the Child was referred by him to the Janeway for investigation of seizures that had begun shortly after the Child suffered a bout of whooping cough.

> Physical examination at that time was essentially negative and her physical and mental development was regarded as appropriate for her age. She was discharged home on Phonobarb 10 mg. twice a day.

By June 1971, the Mother contacted Social Services (then: Social Services and Rehabilitation) to place the Child in institutional care. The Social Services' welfare officer who discussed this prospect with the Mother included the following in her report dated 27 July 1971 to the Social Services Director of Institutions [003.]:

> ... [The Child], two and a half years makes it difficult for ... [the Mother] to give the other children in her home the type of care and attention they need. This little girl has to be closely supervised at all times as she could quite easily do harm to herself if left alone.
>
> ... [The Child] has very little fear of anything; she climbs on the stove and takes the covers off boiling pots - she has no fear of steam or fire, although she has on occasion been badly burned. She eats whatever she gets hold of - buttons, glass, and bugs. She likes fur and wooly things and will try to eat them. ... [The Mother] is unable to take her anywhere because of her behaviour.
>
> ... she mostly eats colored vegetables.
>
> ... [The Child] is very dirty over herself; she is not toilet trained and cannot stand for her pants to be dry. If she has been changed, she will usually find some water and wet herself. She will use the bathroom wherever she happens to be.

> ... [The Child] is unable to talk; she usually grunts and makes strange noises.

On 06 October 1971, the Child's Mother made a Non-Ward Agreement with the Director regarding the Child. [009.]

As a result of the Agreement - pursuant to which the Child remained in the Director's care to age 16 years - the Child was taken, on the same date, by a welfare officer on the Director's behalf, to Doctor 1. Doctor 1's resulting report [010.] included the conclusions that

> From ... [November 1969] until now ... [the Child] has returned on more than two occasions [to me] for re-assessment and was later discovered to be mentally-retarded and athology of which was not and still is not clearly understood. Presently the position is still the same, there is no clear cut motive deficit, that I can detect. If anything the child tends to be hyperactive. She has a recent burn on the left buttock which is clean and dry and healing.

On 07 October 1971, the Child was placed on the Director's behalf at Exon House. [011.]

A report dated 08 October 1971 to the Director from a welfare officer in the District Office responsible for the urban community where the Child's parents continued to reside ("District Office") [012 to 013.], suggested that the Child's hyperactivity had lately intensified:

> ... [The Child] is a hyperactive three year old - there is no end to her energy, and she has to be heavily sedated in the night in order to sleep. She has very little fear, and she can be seen climbing over chairs, on top of the stove, and places where even an older child might not be able to get. She climbs fences and has to be watched when near the road.

> She is unable to talk, but merely grunts and makes strange noises. ... [The Child] seldom notices anybody speaking to her, but usually goes right ahead with what she is doing.
>
> ... the home situation, along with her behaviour has necessitated her admittance to Exon House.

Exon House

Exon House, situate at 30 Strawberry Marsh Road, St. John's, operated from 11 March 1971 until 30 June 1989, as an institution administered by Social Services for severely mentally and physically challenged children (capacity of Exon House: about 100 children).

Exon House was employed for that purpose to relieve overcrowding at Children's Home. The Children's Home had been established in 1964 on Water Street West, St. John's, in a building known as the Merchant Navy Hospital.

Exon House was the Child's home from 07 October 1971, approximately a month short of her third birthday, until 01 February 1988 when she was nineteen years old. [011;169.]

From shortly after her arrival at Exon House up until at least 1980, the Child lived in the wing of Exon House known as "1 South"; whose residents were (or should have been) under constant supervision. [022.]

At Exon House, the Child's care and security were the responsibility of several classes of persons: the Exon House administratrix, child therapists, nurses, doctors, teachers and security persons.

Parents

Following the Child's placement at Exon House, the Mother visited the Child as often as "weather & distance will permit"; at least until January 1973. [019.] In October 1973, the Mother was visiting the Child "occasionally & keeps in touch." [022.] By 19 February 1975 a Social Services social worker following the Child described the parents' relationship with the Child as follows [023.]:

> No recent contact known. Seems to be loosing interest.

On 11 September 1975, a social worker's report stated [025.]:

> No known contact [by parents of the Child] since last report [on 19 February 1975].

All subsequent reports disclosed no contact by parents with the Child for the duration of her stay (to 01 February 1988) at Exon House. A social worker who visited the parents in 1976 reported on 31 May 1976 that the parents were not interested in having the Child returned to them. However, as of January 1979 [030.], a volunteer was sometimes taking the Child out of Exon House for daytime periods.

For their part, the Child's parents continued to increase their family size. When the Child was placed from the family to Exon House in October 1971, she left behind two brothers. By 31 May 1976, two more children had been born and a sixth child was imminent. [024; 026.]

Child Development

The gradual acquisition by the Child of basic living skills while at Exon House is described in Child Progress Reports prepared by Social Services' social workers. Immediately below are excerpts from all of the Reports, made from 1971 - the year the

Chapter VI

Child was placed in Exon House - to and including 10 January 1979:

1. Child Progress Report dated 17 January 1973 [019.]:

> ... [The Child] is said to be autistic. She is however a pleasant child preferring to play alone in a very orderly fashion.
>
> It is possible that ... [the Child] could eventually become toilet trained, however, constant individual attention is needed before her full potential is known and realized.

2. Child Progress Report dated 04 October 1973 [022.]:

> ... [The Child] continues in good general health. She is eating & sleeping well. She is still not toilet trained.
>
> ... [The Child] is now associating with others a little better. She has been transferred to 1 South, so that she will have more contact with other children.

3. Child Progress Report dated 19 February 1975 [023.]:

> ... [The Child] is very active & runs & climbs quite a lot. Her general health is good. She is able to feed herself but is not toilet-trained & cannot dress herself. She has no speech development.
>
> ... [The Child] is generally a loner & doesn't want to mix with the other children. She is not very responsive.

4. Child Progress Report dated 11 September 1975 [025.]:

> ... [The Child] continues in good general health. She can feed herself with her hands & is partially toilet trained.

> ... [The Child] is still quite active. She refuses to associate with other children & loves attention on an individual basis.

5. Child Progress Report dated 16 March 1976 [027.]:

> ... [The Child] has continued in good health. She now feeds herself with a spoon and can indicate her need to use the bathroom. She is a very clean child.
>
> ... [The Child] always exhabits a great deal of energy. She loves physical activity where she can run, climb and jump. She has difficulty relating to the other children.

6. Child Progress Report dated 11 April 1977 [028.]:

> ... [The Child] has been in good health since last report. She can feed herself and is now placed on a toilet-training program but is not doing very well. She is also learning to dress herself.
>
> ... [The Child] does not relate well to the other children but she loves physical activities. She spends much time running around the playroom.

7. Child Progress Report dated 30 March 1977 [1978] [029.]:

> ... [The Child] recently had a grand mal seizure but she is doing well since then. She can feed herself and partially dress herself but she is not doing anything with her toilet training. ...[The Child] still does not relate very well to the other children but likes to be alone. She still strips off her clothes, although not as often and she like staff's attention.
>
> ... [The Child] is attending Preschool here at Exon House and is adjusting fairly well.

8. Child Progress Report dated 10 January 1979 [030.]:

> ... [The Child] had a grand mal seizure about a month ago but has been fine since. She can feed and dress herself but is otherwise dependent.
>
> She still takes off her clothes and will run away if given a chance.
>
> She is on no special program at the present time.

Janeway

From the date of the Child's placement at Exon House on 07 October 1971 until and including April 1979, the Child was admitted to the Janeway on three occasions: on 18 February 1972 [015.], 03 April 1972 [017.] and on 26 March 1979. [094.]

The reason for the Child's admission on 18 February 1972 is summarized in the Janeway's Discharge Report regarding the Child dated 21 February 1972 [015.]:

> Two days prior to admission patient fell of the chair and bumped the front left part of the head. Patient slept about four hours afterwards, no neurological signs. On the day of admission patient was sleeping more than usual and the nurse at the Exon House decided to send patient in because the bump had been soft. ...

The Child was again admitted to the Janeway on 03 April 1972 because of a [017.]

> two week history of sore throat. Two days prior to admission, she developed a slight cough and fever.

The Child's third admission to the Janeway was at 8 p.m. on 26 March 1979 when she presented in the visible condition recorded in six photographs contained in Volume 2 of this proposed Exhibit ("the photographs").

Issue 1: Health Care

(a) Exon House

The events which resulted in the Child's admission to the Janeway on 26 March 1979 most likely occurred at Exon House where the Child had been continuously residing since 07 October 1971.

The Health Care Progress Notes kept by Exon House regarding the Child include one entry for 25 March 1979. The entry states [031.]:

> Discovered lg. lump behind Lt ear & multiple scratches around external ear, cause unknown. Have Dr. check on next visit.

Both the Child's Progress Notes [033.] and records of Doctor's Orders [032.] kept by Exon House state that on 26 March 1979, a medication - Bactrim - was prescribed for the Child.

The same entry in the Child's Progress Notes [033.] - the first of four entries on 26 March 1979 - stated

> Banging over weekend. Noth. to find.

The remaining three entries in the Progress Notes regarding the Child for 26 March 1979 are as follows [033.]

> (L) eye bruised - multiple small bruises and scratches - crying at intervals thru out day. Given atasol 1 tsp. @ 1430 hrs. more relaxed.
>
> 5 p.m. 26-03-79 Requested by ... to have some

> medications Dr. ... ordered ... has telephoned to commence [medication] at 6.p.
>
> 7 pm called to examine condition of ... [The Child] ... large bruises on scalp ear (L) eye completely closed. numerous cuts and bruises, high pitched screaming Face swollen beyond recognition Skin rough. Washed looking. Taken to Janeway seen by Dr. ... admitted.

(b) Janeway

The first report from the Janeway regarding the Child's admission on 26 March 1979 was a letter dated 29 March 1979 from a Janeway staff pediatrician (who was also Chairperson of the Janeway Child Protection Team) ("Doctor 2") to the Director [038.]:

> This ten year old girl was admitted ... for observation and treatment of bruises. She is a retarded girl ... . She was reported to be a head banger and hyperactive child.
>
> I saw her on March 27, 1979, at which time she had swelling and bruising of the scalp, forehead, face, behind the ears, neck and both eyes. Skull x-ray was normal. There was no evidence of any other significant injury.
>
> While such injury could be self-inflicted, I feel that the circumstances whereby the above-mentioned injuries were obtained should be investigated.
>
> The patient has also been seen by ... [another pediatrician, Doctor 3].

On the same date - 29 March 1979 - Doctor 2 telephone the Criminal Investigation Division, N.C. [051.], and reported that the Child had been admitted to the Janeway on 26 March 1979 at 8 p.m.

> suffering from bruising and swelling of the scalp and face.

As a result of Doctor 3 seeing the Child (as mentioned in Doctor 2's letter to the Director), he wrote a report on the Child, dated 09 April 1979, which he sent to Detective Kelvin E. Barnes, a member of the Criminal Investigation Division, N.C., and which he copied to the Director. [040 to 041.] Doctor 3, who saw the Child shortly before Doctor 2, wrote in his report to Detective Barnes that upon the Child's admission to the Janeway

> There was very little history available from the institution and there was no explanation for these injuries.
>
> I saw the child around 1330 on March 27th. ... . she was ... restrained and ... had massive bruises over her face and scalp. She had marked ecchymoses of both eyes and there was marked bruising all over her forehead and massive bruising and "bogginess" over the lateral part of her scalp. The bruise over her left cheek was massive and comprised all of her left cheek and went well back over her ear and back into her scalp. She also had scattered bruises on the rest of her body but these were faint and different than the other areas. The massive bruising on her face and scalp seemed recent and certainly seemed no more than 36 hours old.
>
> Laboratory investigation ... showed no evidence of fracture. ... . this girl bled a massive amount into the injured area ... .
>
> During her hospital stay the child has been mute and obviously has marked developmental retardation. However, she is able to get around reasonably well but must be supervised by our personnel in the hospital. She has not exhibited any significant head banging during her stay at this hospital.

> It is my opinion that this child was injured by a person or person who used violent force to inflict these injuries upon her. I do not think that these injuries are accidental and if they were accidental it would have to be explained by some unusual circumstances such as a high impact force delivered in a motor vehicle accident. Because these injuries are multiple it is not likely that these were caused by an injury such as falling over stairs, particularly because the injuries were only seen on her head.
>
> I would suspect an assault on this child for several reasons, the main one being the extent of the injuries sustained by this child, but also it is the opinion of several experienced individuals that have been at the Janeway since its opening and who deal primarily with trauma - a neurosurgeon [Doctor 4], a general surgeon [Doctor 5], and an nursing supervisor [Nurse 1] - that they have no recollection of a child ever having been admitted to the Janeway with any extensive injuries sustained by self-inflicted head-banging. Also it is a fact that if this is an accident, and because she is in a custodial institution there must be other people who have witnessed it, however to this date I am unaware of any accident report about this child.
>
> In summary, this is an eleven-year old girl who has sustained very significant injuries about her face and head and, in my opinion, these can only be explained by some brute force inflicted by some other individual. I do not think that these could have resulted from head-banging, nor could they have occurred as the result of an accident that would normally occur around an institution.

Doctor 2, having previously written to the Director on 29 March 1979, also sent a letter to Detective Barnes dated 09 April 1979 [041A.], in which he expressed the opinion that:

> The extent of the injuries noted on this girl is very suspicious of non-accidental trauma. While self-inflicted injuries are perhaps possible, the circumstances surrounding the child's injuries should be investigated.

On 10 April 1979, the Child was discharged from the Janeway and resumed living at Exon House. [043.]

A medical doctor [Doctor 6] in private practice at St. John's who followed the Child, reported by letter to Detective Barnes, dated 07 May 1979 [042.], the Child's history during the previous six months, including:

> 1) Mental Retardation with Behaviour Problems -- ... [the Child] has been mentally retarded since birth. During the past six months she has had outbursts of aggressive destructive behaviour (ie) episodes of head banging at times. However on several occasions these were probably secondary to illnesses (ie) ear infections etc. and at other times there were no apparent causes. She did not at any time cause severe damage to herself. Actually over the past six months her behaviour has improved and her medication (ie) mellaril which was used to modify her behaviour had been gradually reduced and discontinued on November 10, 1978.
>
> 2) Epilepsy -- ... [the Child] has had history of grand mal seizures but these were controlled on phenbarb 90mgs. daily.

Issues 2 and 3: Newfoundland Constabulary and Justice

By 10 April 1979, when the Child returned to Exon House from the Janeway, the N.C. was in possession of

(a) the complaint on 29 March 1979 at 3 p.m. from Janeway staff pediatrician, Doctor 2, who had first examined the Child on 27 March 1979, the day following her admission to the Janeway, [051.]

(b) a written report dated 09 April 1979 from Doctor 2, [041A.] and

(c) a written report dated 09 April 1979 from Doctor 3, another Janeway staff pediatrician, who had also first examined the Child on 27 March 1979. [040 to 041.]

The resulting N.C. investigation regarding Doctor 2's complaint produced two reports, both prepared by Detective Kelvin E. Barnes.

His first report, accompanied by witness statements and the photographs, was dated 23 August 1979. [051 to 078.]

On 16 November 1979, the solicitor in Justice who, on behalf of the Minister of Justice, ordinarily advised Social Services ("the Social Services solicitor") wrote to the Chief of Police [047.]:

> I am wondering if a report has been completed into ... [the Child]'s injuries. The matter was referred to you some time ago.

Her letter was copied to the Director (of Child Welfare).

In response, the report, with covering letter dated 05 December 1979 [049.], was sent by the Assistant Chief of Police to the attention of the Social Services solicitor in Justice. Detective Barnes' summary of his investigation, contained in the report, included the following two points [055.]:

> (IX) Reports of Doctors ... [3] and ... [2] indicated that the injuries were not self-inflicted.
>
> (X) I consulted Dr. ... [7, a pathologist] at the Health Science Complex and after viewing the photographs of ...

> [the Child], he expressed the opinion that the injuries, as shown in the photographs, could not be self-inflicted.

On 11 December 1979, Social Services wrote to the Social Services solicitor in Justice [079.], following an earlier telephone conversation:

> We would very much appreciate if you would advise whether a report has been completed pertaining to the alleged assault of the ... [the Child] at Exon House.

By 14 December 1979, the Director of Public Prosecutions ("D.P.P.") had examined Detective Barnes' first report and, on that date, wrote to the Chief of Police [080 to 081.] and stated that

> ... some further investigation may be necessary.

His letter, copied to the Social Services solicitor, continued as follows:

> ... I note that during the past few months some administrative and operational difficulties have arisen in light of the transfer from the old building to the new headquarters. Now that this is over, it should be possible to carry on the normal duties much more efficiently.
>
> The investigation into this matter indicates that the report was submitted by the Detective concerned on August 23, 1979, but was not received here until December 5, 1979. No doubt this was affected by the move referred to above.
>
> Perusal of the file leaves no doubt in my mind that the injuries sustained by this child were not all self-inflicted. There is clear medical evidence to support this view and sufficient other evidence to raise very serious suspicions.

> No statements were taken from Dr. ... [6] and nurses ... [2] and ... [3]. In fact, there is nothing to indicate that the latter were even interviewed. You will recall that certain activities at Exon House raised serious public concern in the past. Every effort must be made to carry this investigation to a successful conclusion. There are other helpless children there who might be treated to similar abuse if this investigation is not pursued.

The communication to the Chief of Police from the D.P.P. was reported upon by a letter from the Social Services solicitor dated 18 December 1979 to the attention of the Director (of Child Welfare) [082.]:

> Enclosed for your confidential information is a copy of a police report in this matter which was received here on December 10, 1979. The associate Deputy Attorney General [and D.P.P.] has asked the police to clarify certain aspects of the case. I will advise you further when we receive the requested clarification.

The following June - specifically, on 06 June 1980 - Detective Barnes' second investigative report, this one responding to the letter dated 14 December 1979 from the D.P.P. to the Chief of Police, was completed [085 to 155.] and, with covering memorandum dated 18 June 1980 [084.], was sent by the Deputy Chief of Police to the D.P.P.

The finding by Sergeant Barnes, in his second report, included the following [086 to 087.]:

> It appears that ... [the Child]'s injury was first noticed on the 12 midnight to 8 a.m. shift, March 25-26, 1979, by ... [registered Nurse 4 and registered Nurse 3], both of whom noticed a slight lump behind her ear.
>
> The injury became progressively worse during the next 24

> hours, until ... [the Child] was examined by Dr. ... [3] at approximately 1:30 p.m., March 27, 1979.
>
> I cannot explain how the examination by Dr. ... [6] at approximately 8:45 a.m., March 26th, did not show any injuries, when approximately one half hour later ... [Child Therapist 1] ... noticed that the left side of ... [the Child]'s face was slightly swollen.
>
> I cannot find evidence to suggest who was responsible for the alleged assault on ... [the Child], if indeed she was assaulted.

One of the enclosures to Detective Barnes' second report was a medical note from Doctor 6, dated 16 January 1980, regarding his examination of the Child approximately 9 a.m. on 26 March 1979, about eleven hours before her admission to the Janeway [088.]:

> Apparently ... [the Child] had been aggressive with head banging over weekend period. At time of examination I did not detect any significant injuries to ... [the Child] ... may have been minimal bruising around forehead but nothing of great concern. ... [The Child] was discharge from office to be observed closely during the day.

Another enclosure to Detective Barnes' second report was a copy of the contents of the Child's medical file maintained at the Janeway [094 to 155.]. In the file were the notes of Doctor 2 that included the following observations he made at 2 p.m. on 27 March 1979 (16 hours after the Child's admission to the Janeway) [110 to 111.]:

> ... This 10 year old girl was admitted here last night from home because of bruises. The child is known to be hyperactive and apparently self destructive. She is severely retarded.
>
> . . . .

She was reported to be banging her head on the day of admission.

EXAMINATION. Difficult child to examine tied in bed with extensive bruising of the face.

. . . .

... mouth - small cut

. . . .

There is extensive bruising and swelling of the scalp involving both the frontal and parietal areas. There is severe swelling of the eye lids and both eyes are very purple. There is swelling of the L cheek and bruising and bruising and swelling behind the left ear extending along the neck almost to the midline. There is some swelling and bruising behind the ear in the area under the auricle. There is bruising of the forehead.

. . . .

Numerous bruises on the shins bilaterally with scattered bruises and scratches over the remainder of the body, none of which are of significance.

. . . .

Impression (1) multiple trauma - the circumstances is questionable ?self-inflicted ?another child ?another person?

Suggest (1) consult Social Service. ... (3) Photographs ... I have spoken to authorities at Exon House who will look into the situation further at Exon House.

The results of the consultation on 02 April 1979 to Doctor 8, a child developmental specialist on the Janeway staff, were also contained in the Child's Janeway medical file and include Doctor 8's conclusions, as follows [155.]:

> Opinion. The primary area of injury could easily be self-inflicted although banging head against the wall usually produces a more anterior lesion. Eye hitting is common & can produce the injuries she shows, & bitemporal selfhitting is quite usual.
>
> She was known to have been injuring herself over a period of approx. 26 hours. ... - could have been self-inflict, culminating in ... self abuse. The Exon House notes show that she was seen at intervals over this period by nurse and doctor once on the 26th, with description of new bruises.
>
> Opinion. In light of the above history, findings & events I feel that these injuries were self-inflicted, & treatment of the child, apart from dealing with the injuries, should be aimed at decreasing hyper-activity & self-destructive tendencies. I note she has swallowed FBs - This is common with self abusers.

Detective Barnes' second report, with its enclosures, were shown by the D.P.P. to the Social Services solicitor and to a Justice 'criminal side' solicitor. [156.]

The opinion of the Social Services solicitor, written 30 July 1980 [156.], was that

> The further questioning on the part of police does not appear to have been particularly helpful.
>
> I found it interesting to read Dr. ... [8]'s notes. She is very knowledgeable in the field of mental retardation and

> perhaps in fact this injury was self-inflicted as she suggests.

On the same date, the Social Services solicitor sent a copy of Detective Barnes' second report to Social Services.

The 'criminal side' Justice solicitor noted, on 05 October 1980 [156.]:

> I have read this carefully.
>
> There does not appear to be sufficient to proceed with charges - Inquiry??

Commission Investigators did not locate any document stating or otherwise indicating that a decision was ever made to request further investigation or to direct the laying of charges or to proceed no further.

Issue 4: Social Services

(a) Exon House

Following medical attention at the Janeway, the Child was returned by Exon House staff to that institution on 10 April 1979.

Neither in the Child's next Progress Report from Exon House nor subsequently was there any reference to her Janeway admission on 26 March 1979, her subsequent inpatient treatment there until 10 April 1979; or the reasons for her admission and treatment. Her next Child Progress Report, which was prepared by a social worker on the Exon House staff and sent to the Director, dated 12 October 1979, informed as follows [044.]:

> (a) Physical ... [The Child] has had several seizures since our last report. Other than this she remains

in good health. She will still run away if the opportunity arises.

(b) Behavioral ... [The Child] can dress and feed herself. She is partially toilet trained in that she will cooperate when taken to the bathroom at regular intervals.

(c) Educational Was attending Learning Assistance Centre until the first of September. These 1/2 hour sessions emphasize basic life skills.

3. CHILD'S RELATIONSHIP:

(a) Parents No know contact has been made since the last report [on 10 January 1979].

(b) Others ... [The Child] was involved in our Total Impact Program this past summer.

4. FUTURE PLANS:

(a) Medical Continued use of mellaril 35 mg TID, Phenobarb 60 mg am and 90 mg HS. Colace 1-2 tsps HS.

(b) Education Will be attending Learning Assistance Centre when it is reopened.

(c) Social Place more emphasis on her toilet training.

(b) Social Services Headquarters

First notification of Social Services regarding the Child's injuries on 26 March 1979 had been by letter to the Director from Doctor 2, a Janeway pediatrician, dated 29 March 1979. [038.]

The Director, in turn, sent a copy of that correspondence to the Administratrix of Exon House with the Director's covering letter dated 04 April 1979. The Director wrote [039.]:

> I am attaching for your information a copy of a letter recently received from Dr. ... [2] of the Janeway Child Health Centre concerning the ... child. As agreed during discussions on this case late last week, I look forward to a meeting between you, and ... [the Social Services solicitor] and myself regarding this case as soon as you have had an opportunity to totally assess the situation at Exon House.

If the meeting proposed by the Director took place, no record of such meeting was found by Commission Investigators.

Reports to Detective Barnes by Doctor 2 and Doctor 3, both dated 09 April 1979 [040 to 041A.] were copied to the Director.

On 12 November 1979, a Transmittal Slip from the Assistant Director to the Director stated [045.]

> This case was reported as an alleged child abuse - do you know where we stand on the case now.

On 13 November 1979, the Director wrote on the Transmittal Slip [045.], the following:

> ... [the Social Services solicitor] may have info. Would you like to speak with her?

On 15 November 1979, the Assistant Director wrote a note to the Child Welfare Program Co-ordinator at Social Services Headquarters [046.]:

> I have made some notes on Dr. ... [2]'s letter [041A.] - lets record as reported child abuse & KIV for 2 weeks.

> We will then write to Justice - if no police rept has been received by then.

> The Social Services' solicitor, with her covering letters dated 18 December 1979 [082.] and 30 July 1980 [157.], sent Social Services a copy of each of the two N.C. investigative reports dated, respectively, 23 August 1979 and 06 June 1980.
>
> The only Social Services file on the Child is its Headquarters file. There is no document in that file indicating that Social Services made any response to this matter other than to gather the documents mentioned in this Summary.
>
> Subsequent Events
>
> From 10 April 1979, the Child continued to reside at Exon House without incident until her discharge from there on 01 February 1988 to a Group Home in an urban Newfoundland community [169.]. The Child is living in that Group Home today."

* * *

The foregoing account, although an extreme case, may be considered an episode in the declining fortunes of Exon House which was first used as an "institutionalized" home for handicapped children by social services in 1971 and continued as such until June 1989 when it was closed except for some independent daycare activity conducted during a five-day week. Evidence was given to the commission on June 14, 1990 by Mrs. Violet Ruelokke, from 1966 to 1981 director of nursing at Grace General Hospital in St. John's and director of its school of nursing, and from 1981 to 1989 executive director of the Association of Registered Nurses of Newfoundland. When president of the association she headed a delegation which expressed concern in 1977 to the deputy minister of the Department of Rehabilitation and Recreation about the quality of care applied by the administration of Exon House and the Children's Home and particularly in the area of "behaviourial modification".

The association was perhaps handicapped by the fact that its complaint was directed against the employment of inadequately qualified child therapists instead of nursing assistants which gave it the appearance of a jurisdictional dispute. But almost from the beginning of government's operation of Exon House allegations of brutality and neglect had from time to time been made public. The fact that the association's specific complaints made in 1976 had not been conveyed to the minister was revealed by its final and effective protest to Premier Moores in person. It is unnecessary to review the press reports and ministerial statements of the day other than to say that the public was aroused over the situation of helpless children, whose misbehaviour through no fault of their own was apt to provoke the uncontrolled anger of those who had charge of them. Public concern was heightened by the death of a nineteen-year old patient at Exon House found in a bath-tub in September 1977 after considerable investigation and reporting had been done. It is remarkable that the case of the child considered in profile no. 17 should have received so little attention after the excitement two years before, but one may suppose that by this time the die was cast and the enterprise at Exon House liquidated; already contemplated ten years before it was complete. The present policy is to place mentally and physically retarded patients in group homes or independent living arrangements and to withdraw support from institutions of which Exon House and Mount Cashel were examples.

Chapter VII: The Questions in Article II

The questions which must be determined in summarizing the commission's examination of policies and practices of the Departments of Justice and Social Services are suggested by the wording of article II as set forth at the beginning of chapter VI. First it will be observed that the commission is enjoined to make a general inquiry into the policy or practices "then prevailing" referring to the Newfoundland Constabulary investigation of December 1975, in compliance with which commission counsel and investigators did not put too fine a point upon the indicated date, but concerned themselves with what happened before, then and thereafter with a view to my answering the questions posed in the particular determinations required by subparagraphs (a), (b) and (c). These inquiries, as already noted, cover a period from a time when child abuse went almost unnoticed, and was little understood, to one when tragic revelations of the often permanent damage inflicted on the emotional stability of the victim, much of it passed on from parent abuser to child victim and in turn inflicted on a third generation, became common knowledge. It is understandable that whatever policy was pursued was not uniform, and whatever practice resorted to not dictated by precedent.

An understaffed "criminal side" of the department of justice wrestled with the many problems of prosecution in the courts with a leaning towards the weighing of evidence rather than the setting of an example to the community of the presence of the rule of law. At the same time the department kept a tight rein on the two police forces which served the province, one indigenous, the Royal Newfoundland Constabulary, and the other contractual in the sense that the Royal Canadian Mounted Police, a federal force with a multitude of federal concerns, served Newfoundland as provincial police hired on terms similar to those agreed to by every province in Canada other than Ontario and Quebec. The Constabulary made no bones about deferring to the prosecutors in the matter of laying charges; the R.C.M. Police in spite of asserting a more independent policy, in almost every case examined - that of Father R.H. Kelly being a notable exception - paid equal deference to the Crown lawyers as to whether charges should be laid, or allowed files to be "concluded" by junior officers after no apparent consultation with their superiors.

The department of social services, with many opportunities of early detection of child abuse, appeared to be committed to a policy of "keeping the family together" and was frequently confronted by the irresponsibility of parents and worse. Its front-line workers, however devoted, rarely succeeded in obtaining the cooperation of neighbours in the detection of child abusers or of conveying to the community, urban or rural, the vital provisions of section 49 of the *Child Welfare Act, 1972*, whereby those with knowledge of or reasonable grounds to believe in the presence of child abuse were bound to report it or incur a penalty, much less the provision which protected an informant from actions for libel and slander. Excessive case-loads arising from chronic understaffing, similar to and even more onerous than those which bedevilled the Crown lawyers, weighed heavily on the social workers of the child welfare division.

The same department from time to time, followed what may be a general bureaucratic practice of allowing an "executive" of deputy, associate deputy and assistant deputy ministers to limit the initiative of officers like the Director of

Child Welfare, and to discourage that of ministers by withholding information which they in their wisdom thought it unnecessary to give them, except in rare cases where they might be compelled to make explanations in the House of Assembly. I must not be heard to say that the evidence discloses any intent to deceive or conceal; but in spite of what was testified to by Mr. Hollett and Mr. Pope about the devolution of responsibility encouraged by the management policy of the government of Premier Moores, this attitude was deeply engrained and indeed acquiesced in by the officers concerned and not always contested by the responsible ministers. The prime example of defective communication in this regard was the Mount Cashel investigation of December 1975 and its attendant complaints, as to which both the minister of social services and the minister of justice were denied information which, however unpalatable, would have avoided an accumulation of embarrassment in later years and been of incalculable benefit to victims of the abuse complained of. The case of the Mount Cashel investigation of 1975 does not stand alone as an example; the failure to advise the minister of the full import of the subsequent Mount Cashel investigation of 1982 was its counterpart. Mr. Hickey, it will be recalled, complained that although he had been informed of the case of Brother Burton's activities he was not told about, and had no knowledge of the investigation of homosexual activity consented to and indulged in by juvenile residents. He had a further complaint about his briefing in the affair of Alonzo Corcoran. Contemporaneously the minister of justice was the Honourable Gerald R. Ottenheimer (since 1988 a member of the Senate of Canada), assuming office on July 3, 1979 and retaining it till April 24, 1985. On June 28 and 29, 1990 he gave a sworn deposition to the commission in the form of questions put by Mr. Day, responded to by him in his office at the Senate in Ottawa.[169]

An extract from this deposition serves to illustrate the situation of a minister of justice who had responsibilities related to those of a minister of social services. Mr. Day put to Senator Ottenheimer the following questions and received the answers indicated:

> **"Q. The first question is as follows: While you were the Minister of Justice did you in any way encourage or establish or support a practice or policy of lawyers on the criminal and civil side of your department agreeing to therapy, private therapy, for a suspect or an accused as a potential alternative to charging or prosecuting a person in circumstances where there existed reasonable and probable grounds to believe that the person had committed a criminal offence.**
>
> **A. My policy was that wherever the evidence warranted there should be prosecution. The question then with respect to therapy and medical treatment, counselling, and that entire related field would, I think, be more appropriately a matter to be deliberated and decided by a court such as in the sentencing process.**
>
> **Q. My second question is prompted by two matters in particular that I bring to your attention. The first relates to inquiries by police and Social Services in 1982 that I summarized for you generally yesterday. Involved were a member of a lay religious Order, one civilian, and 21**

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[169] Exhibit C-0627.

boys who were either alleged assailants, alleged recipients of mistreatment, or were witnesses to such alleged conduct of a sexual nature amongst boys at Mount Cashel. In that situation, the evidence tends to show that the Assistant Director of Public Prosecutions and the solicitor then advising the Department of Social Services on behalf of the Minister came to an understanding as follows: that provided Social Services took steps to look out for the interest of the affected children, Justice would deal with the alleged assailants outside the criminal justice system by therapy and likesuch. Neither occurred on the basis of every reasonable inquiry and search that our Commission Investigators were able to do. The other situation prompting my second question to you this morning, involves a request made on 25th June 1982, by the Deputy Minister of Social Services, to the Deputy Minister of Justice, for legal advice on a number of matters resulting from the coming into force on April 17th, 1982, of the Charter of Rights and Freedoms. This request for advice to Justice was responded to by the solicitor who, on behalf of the Minister, would normally advise Social Services, on May 16th, 1983, just short of the year later. When the response was made, it was not a substantive one in that it indicated that the solicitor in Justice did not have "time to study the question but I understand that one of the Provincial Court Judges is addressing this question over the Summer. His project includes other Provincial Statutes as well, I will keep you posted." Every reasonable search and inquiry by Commission Investigators has failed to indicate that during the rest of 1983 or in 1984 was there any further communications between

Justice and Social Services on this matter. Were you ever informed or otherwise aware of either of these two situations that I have a moment ago outlined to you.

A. No I was not informed nor aware of either of those.

Q. Further, how can a Minister deal with matters such as these inappropriate responses to criminal complaints or a lethargic, insubstantive response to a request for legal advice from another department of government, in terms of checks and balances? From your point of view who is responsible for monitoring these sort of things, and avoiding their repetition?

A. Well, with specific reference to the letter from the Deputy Minister of Social Services to the solicitor in Justice, for certain legal advice and the fact that practically a year passed without substantive reply, and the reply that was sent did not address the issue, it would appear to me there that the Deputy Minister of Social Services, I suppose, had a number of courses of action, and I don't know that they were pursued or not. First, it would have been to complain very firmly to the solicitor. If he didn't wish to do that, then to complain to his counterpart, the Deputy Minister of Justice. There was also, of course, an avenue where he would have advised his minister and would have relied on a Minister to Minister reference. I know the latter did not happen and I'm not aware of a Deputy to Deputy conversation on it. But, in general, I think these would be the avenues to rectify the situation available to the person who asked for the information and didn't receive it.

In a more general context, I think that what I would like to do is indicate specifically mechanisms that I established to keep myself informed and then on a more general basis, what I consider the basis of ministerial responsibility in general. During my term as Minister I met, on a quite regular basis, the Deputy Minister and also with the two Associate Deputy Ministers, sometimes all four of us were together and sometimes it was two or three of us. But this was on a fairly regular basis and the purpose of these meetings was to review the work of the Department and to identify what problems there were and to decide upon what actions were to be taken to rectify it. It was my responsibility to be informed of these matters and to the extent policy was involved, not a detailed administration, but policy was involved, to naturally be involved in solutions. To the best of my knowledge the Deputy Minister who served with me and the Associate Deputy Attorney General and Associate Deputy Minister in the civil field had conversations that were always open and frank. I certainly believe they felt that I was quite accessible and that I didn't have to call a meeting or anything to have a matter brought to my attention and indeed on their own initiative they frequently briefed me on a matter or asked my opinion on a matter, or generally discussed things with me.

Q. As were individual solicitors in the department?

A. That is correct. On a number of occasions an individual solicitor would ask to see me to discuss something and on other occasions I would ask to see a specific solicitor on a matter that he or she would be working on which I wished to be apprised of in terms of what progress was being made and certainly it is my opinion, and I would be surprised to the contrary, that none of the people involved felt that I was not accessible and I was certainly of the opinion that they felt totally accessible. These people are the Deputies and Associate Deputies and all the solicitors. With all of them I had dealings that were honest, frank and open. Now in terms of the meetings with the Deputies of course they can only inform me of what they knew and I am of the opinion that they always informed me of what they knew within important areas. Probably in a more general context, and I am not necessarily thinking of any specific reference, but in a more general context, the question comes up of ministerial responsibility and a number of treatises have been written on the subject and obviously you made reference to it in a former public inquiry. The way I have always regarded it and I don't think it is at variance as to what you mentioned it is probably just a slightly different formulation: I take as given that a Minister must be honest and must be competent. I think a Minister must be diligent and prudent in the performance of his or her public duties and in this context I take diligence and prudence to be synonymous, and I suppose I use those terms to emphasize that it would be a betrayal of public responsibility to be negligent and nobody can reasonably expect omniscience. In my formulation of ministerial responsibility, the Minister must be diligent and prudent."

Although this definition of ministerial responsibility may strike as novel those who have believed that it means responsibility to the House of Assembly for all the affairs of the minister's department, it is obvious that in this testimony there are echoes of the evidence of Chief Justice Hickman as to his own reputation for accessibility and the general harmony which existed when he was minister of justice in preceding years. Yet both he and his successor were on critical occasions denied information. As to the observation of Mr. Day inserted into the second question that "the evidence tends to show" that two senior officers, one from each department, came to an understanding that if social services looked after the affected children justice would deal with the alleged assailants outside the criminal justice system, there is no question, as he pointed out, that nothing of this nature was done.

In spite of various compromises which could and did temper the wind to the shorn lamb in the matter of prosecution there was no case, other than that of Christian Brothers Ralph and English in December 1975, in which agreement to leave Newfoundland was either offered or accepted as the price of immunity from prosecution. The closest analogy is what occurred in 1979 when Father Ronald Hubert Kelly was represented to the magistrate in Corner Brook as having a room reserved for him in a place called Southdown and a seat on an aircraft which he proposed to occupy upon leaving the courtroom. I can only answer in the negative the question posed in article II (a) as to whether there was a policy or practice of suppression of allegations of physical and sexual abuse where the alleged assailants agreed to leave the province of Newfoundland. I observe that what occurred in December 1975 was neither policy nor practice, but a single convulsive response by co-religionists of the alleged offenders to what was perceived as a challenge to the faith and morals of their religious community. This conclusion having been reached, and the answer to the first question being "no", the questions posed in paragraphs (b) and (c) cannot be addressed.

Chapter VIII: Law Avoidance

Due Process of Law

By the provisions of article III of the commission's terms of reference I am asked "whether existing Police and Government Departmental Policies are sufficient and proper to prevent avoidance of the due process of law in instances of allegations of physical or sexual abuse of children". The term "due process of law", frequently shortened to "due process", is little used by lawyers trained in the English tradition. It occurs very often in American case law and jurisprudential writings. In my experience in Canada it was rarely used but since the adoption of the *Charter of Rights and Freedoms* a shy appearance has occurred. In the United States its use is frequent and familiar particularly to constitutional lawyers. I have thought it important to explore authorities not in depth but in sufficient contemplation to make sure that the language of article III of the terms of reference is understood.

The latest English law dictionary consulted, stating the law as at 1977, is the second edition of Lord Jowitt's *Dictionary of English Law*, which has no title for "due process" but defines "process" at considerable length. The opening paragraph of the entry as derived from Britton reads:

> **"The proceedings in any action or prosecution real or personal, civil or criminal from the beginning to the end; strictly, the summons by which one is cited into a court, because it is the beginning or principal part thereof, by which the rest is directed."**

The definition continues to examine the meaning of process in its various applications in former times and, bringing matters up-to-date, declares that for civil actions process consists of the writ of summons or originating notice, execution by which a judgement or decree is carried into effect, and as against persons not parties to an action such as jurors and witnesses. In criminal proceedings process means "proceedings issued to bring in a person to answer an indictment which has been found against him". *Black's Law Dictionary*, a leading American authority, (revised fourth edition) as might be expected lists the complete phrase as "due process of law" and derives the following from the Constitutional Commentaries of the famous American jurist and judge Joseph Story as "law in its regular course of administration through courts of Justice", citing *People v. Skinner*, Cal. 110 P.2d.41,45 for the statement that, "'law of the land', 'due course of law', and 'due process of law' are synonymous".

The last word may be said by the author of *The Oxford Companion To Law*, David M. Walker, who because of his position as Regius Professor of Law in the University of Glasgow can be credited with a dispassionate view of all systems and jurisdictions. The title "Due Process" reads,

> **"The conduct of legal proceedings according to established principles and rules which safeguard the position of the individual charged. The concept of due process is rooted in English common law and expressed in Magna Carta art. 39 (1213) whereby the king promised that 'no free man shall be taken or imprisoned or disseised or exiled or in any way destroyed ... except by the legal judgement of his peers or by the law of the land'. This was later interpreted to require trial by jury. In later statutes and books the phrase was used with or in lieu of the phrase, 'the law of the land'. The concept was adopted by the U.S.**

> **Constitution in the fifth amendment (1791) which was extended to state action by the fourteenth amendment (1867) and has been said by the Supreme Court to mean the same as the law of the land."**

Conceivably, one can avoid the law of the land in two ways: first by not using it and second, by not having it used against one.

Avoidance in Practice

I regret the absence of the word "practices" in article III because many of the difficulties conducive to avoidance of due process of law in this regard are created by failure to practise what the policies preach, or to put it in another way by indulging in practices which policies do not countenance. To illustrate this proposition one need only turn to the *Child Welfare Act, 1972* an expression of policy of the highest importance. It is true that the future of this legislation is under consideration in the Department of Social Services at the present time and much of what is said here may well be under contemplation by civil servants and legislators in due course. Section 49 of this statute as it stood in 1975 which has already been quoted (p.56) in chapter II of this report was later to be amended in 1981 by S.N. 1981, c.54 s.6 so that it read:

> **"(1) Every person having information of the abandonment, desertion, physical ill-treatment or need for protection of a child shall report the information to the Director or a social worker.**
>
> **(2) Subsection (1) applies notwithstanding that the information is confidential or privileged, and no**

> **action lies against the informant unless the giving of the information is done maliciously or without reasonable and probable cause.**
>
> **(3) Any person who fails to comply with or contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment."**

Originally subsection (3) provided that failure to comply with or contravention of the section was an offence and left the penalty to section 55 subsection (2) of which provided that:

> **"Where no penalty is provided for a breach of any provision of this Act or of any regulation made under this Act, a person committing the breach or failing to observe the provisions thereof is liable on summary conviction to a fine not exceeding two hundred dollars, or in default of payment, to imprisonment for a term not exceeding two months, or to both such fine and such imprisonment."**

It will be observed that for obvious reasons in the climate of 1981 the penalty for failing to report abandonment, desertion, physical ill-treatment or need for protection of a child was increased from a fine of two hundred dollars and imprisonment not exceeding two months to a fine of one thousand dollars and imprisonment not exceeding six months or both in each case. Nevertheless I can find no reference in all the evidence submitted to the commission of any charge being laid under this section, and although this may not be conclusive it suggests two things: first, inattention to the provisions of the statute which is by no means isolated, and second, a failure to appreciate the plight of victims of mistreatment. In the latter case the involvement of Father R.H. Kelly with young boys and youths in his west coast parish of 1979 produced no such report from either police or public.

Again subsection (7) of section 12 of the act, as it existed in 1975, provided that "an order made under Section 15 shall recite the facts so far as ascertained in an investigation under this section and the Judge shall deliver a certified copy of the order to the Director". Sweeping amendments made by the *Child Welfare (Amendment) Act, 1972*, S.N. 1988 c.45, s.1 provide for section 11.1(7) that "an order made under section 15 shall recite the facts so far as ascertained in an investigation under this section and the Judge shall deliver a certified copy of the order to the Director". In most cases investigated by the commission the order was made on a printed form number 11-606 entitled "Order Respecting A Neglected Child". For long after the introduction and passage into law of the *Child Welfare Act, 1972* the form referred in print to the *Child Welfare Act, 1964* and no attempt was made to alter this anachronism. The form provides for the name of the alleged neglected child and the names of its parents, but no other "ascertained facts". At its foot, and in brackets beneath the space for the signature of the judge of a family court or stipendiary magistrate, are the following words "(two copies of this Order and Copy of Evidence to be forwarded to the Director of Child Welfare)". Although the bare orders are generally present in the wardship files of the child welfare division, I can think of only one case in which any attempt was made to state the facts ascertained to date or any of the evidence reviewed; that is in child welfare profile no. 11.[170]

If it is assumed that the *Child Welfare Act, 1972* and regulations made thereunder constitute the visible expression of policy in matters of child welfare, then attention must be given to developments which have official sanction but do not appear to be authorized by the enacted law. Three types of agreements of an extra-curial character affect the care of a child in need of protection. The first is a written agreement made by the parent to yield care and custody to a person other than the director, prohibited by section 45 subsection (1) of the *Child Welfare Act, 1972* which read when first enacted:

> **"45(1) A person shall not accept a child under the age of twelve years into a home for the purpose of providing that child with board or lodging, or both, unless that person**
>
> **(a) has received permission under this section from the Director or other person designated by the Minister generally or specially for the purpose, hereinafter in this section referred to as the "designated person";**

---

[170] Exhibit C-0469.

Mr. Day has corrected my impression that Judge Barnable's lengthy and comprehensive reasons were unique in the following note:

> "This was one of only three judicial investigations from 1965 to 1990 in which the Commission located a recitation of facts required by *The Child Welfare Act, 1972* and its predecessor *The Child Welfare Act, 1964*."

> (b) is of the same blood as the mother of the child where the child was born out of wedlock; or
>
> (c) is of the same blood as the father or mother of the child where the child was born in wedlock."

and which by 1988 had become by virtue of the *Charter of Rights Amendment Act* S.N. 1988, c.39 s.2:

> "45(1) A person shall not accept a child under the age of twelve years into a home for the purpose of providing that child with board or lodging, or both, unless that person
>
> (a) has received permission under this section from the Director or other person designated by the Minister generally or specially for the purpose, hereinafter in this section referred to as the "designated person"; and
>
> (b) is a mother, father, sister, brother, aunt or uncle or a parent."

An example of such an agreement in 1980 provoked the following letter from Mrs. Mary Noonan in the Department of Justice to a lawyer in St. John's:

> "I have been consulted by the Director of Child Welfare in this matter with reference to a document which you apparently drafted and which was executed on the 19th day of June, 1980. I am attaching a copy for your easy reference.
>
> The Department of Social Services is deeply concerned over this matter as it is illegal to place

> **children privately in this province to non-relatives. In this connection, I would like to draw your attention to section 45 of The Child Welfare Act, Stats. N. 1972, the Act No. 37.**
>
> **I am available to discuss this matter further with you if you wish."**

The agreement was between a mother from Marystown and the foster-mother of a licensed foster-home in Pouch Cove in which the latter agreed to take care of the former's child for three hundred dollars a month and might be considered a professional production if the space for execution by the parties and by the witness thereto were not on a page entirely separate from the rest of the agreement.[171]

The second type of arrangement is a written agreement between a parent of a child committed temporarily to the custody of the director of child welfare by order of the court and a social worker representing the director which is apparently supplementary to the judge's order and would not on the face of it be judicially authorized.[172]

The third type of arrangement is, to use the language in Mr. Day's memorandum of evidence, "an understanding between the parents of a child who is subject to an Order committing the child temporarily to the custody and care of the Director of Child Welfare, a social worker representing the Director, and a solicitor who, on behalf of the Minister of Justice, is representing the Director in the proceeding that resulted in the Order; an arrangement possibly made before the ordering Justice, which provides that notwithstanding the

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[171] Royal Commission Inventory MSH 059, pp.1 - 30.

[172] Royal Commission Inventory MSH 036, pp.9 - 10.

Order, the affected child or children *will* be returned to the parents before the expiry of the term of committal that has been ordered". This situation is exemplified by a letter written by Mrs. Noonan to the director advising him that she appeared before a Supreme Court judge in the Unified Family Court and obtained an order committing four children to his care for a period of six months. She continued, "Your social worker agreed to return the children home before Christmas. Also we have agreed as well that ...", and there follow three conditions which may have received judicial sanction although the writer does not say so. The undertaking that the children will be returned for Christmas may not be consistent with the terms of the order which in this case is not available.[173] These are examples of variations which do not apparently fit the legislative framework.

In the case of the "non-ward" agreements frequently negotiated for placements in Mount Cashel, subsection (1) of section 46 of the statute appears to confer authority, as does subsection (3) for extended care after the age of sixteen years and until the age of nineteen "or until some earlier date considered advisable by him", or maintenance until twenty-one, subject to the same proviso. But caution must be observed in commenting upon the legality of the "non-ward" agreement quite apart from the infelicity of the expression. Section 46 reads as follows:

> **"46.(1) If, because of the special circumstances, he considers it in the best interests of the child so to do, the Director may, upon the written request of the parent or guardian of a child, take the child into his care and custody.**

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[173] Royal Commission Inventory MSH 037, pp.1 and 5 - 7.

(2) The Director may, when he has accepted a child under subsection (1), make such arrangements for the support, care and welfare of the child as in the circumstances he deems fit.

(3) If a child referred to in subsection (1) reaches the age of sixteen years while in the care and custody of the Director, the Director may, where he considers it in the best interests of that child so to do,

(a) continue his care and custody of that child until that child reaches the age of nineteen years or until some earlier date considered advisable by him; and

(b) continue his maintenance of that child until that child reaches the age of twenty-one years or until some earlier date considered advisable by him.

(4) Where the Director has, under the provisions of subsection (1), taken a child into his care and custody, he may, at any time, and from time to time, apply to a Judge for an order for the payment by the parents or guardians of the child to such person or persons as the Judge may direct of all or any of such sums as may from time to time theretofore have been expended for the maintenance of the child, and the Judge to whom such application is made shall make such order as he may consider reasonable under the circumstances.

(5) Without limitation of the generality of his powers, a Judge making an order under subsection (4) may, in any case where there is a pension or income payable to the parent or guardian concerned and capable of being attached, after giving the person by whom the pension or income is payable an opportunity of being heard,

> **order that such part as the Judge may see fit of the pension or income be attached and be paid to such person or persons as the Judge may direct, and such order is authority to the person by whom the pension or income is payable to make the payment so ordered, and the receipt of the person or persons to whom the payment is ordered to be made shall be a good discharge to the person by whom the pension or other income is payable.**
>
> **(6) The Director does not by taking a child into his care and custody under subsection (1) become the legal guardian of the child and he may terminate the care and custody at any time he sees fit.**
>
> **(7) When any other provision of this Act conflicts with this section, this section shall prevail."**

It will be noted that the expression "non-ward" does not occur and I am advised by counsel that "the written request of the parent or guardian of a child" referred to in subsection (1) was rarely encountered in the headquarters and district files of social services. Furthermore, the provisions of subsection (6) are inconsistent with those that permit the director to take a child into his care and custody, these words having the effect of making him the legal guardian of the child at least *pro tempore*. The section indeed is full of difficulty and requires amendment, particularly since judges are empowered to authorize payments of money in situations of doubtful legality. That doubt assailed the draftsman, and perhaps the legislature, as to the effectiveness of the section is perhaps indicated by the inclusion of subsection (7).

It is hoped that these examples of apparently inadvertent adoption of procedures not authorized by statute or regulations made thereunder, which are matters of public knowledge even though done in compliance with the provision of a policy manual which is not, do not need further elaboration as instances of avoidance of the law of the land. A more careful adherence to policy determined by government and exposed to and approved by the House of Assembly and a determination not, in effect, to amend it by means of manuals of policy altered from time to time by circulars and directives of which the public cannot be aware, is all that can be expected of a vigilant public service. More difficult problems are presented by avoidance of the process of the criminal law represented by reliance on what is known as "prosecutorial discretion", and such latter-day expedients as "plea bargaining" adopted as a result of inability to cope with the business of the courts.

The question of prosecutorial discretion will be referred to again, but just as an observance of the law is a prime concern of government in civil matters, so enforcement of the criminal law cannot for long be avoided with impunity. Plea bargaining, or the agreement of counsel for the Crown and the accused in the case of a criminal charge to avoid due process of law by the offer and acceptance of a plea of guilty to a lesser charge, has been resorted to as a means of liquidating arrears of work and securing convictions of offenders on terms which may or may not be appropriate. The recent decision of the Supreme Court of Canada in *Askov et al. v. The Queen*[174], by applying section 11(b) of the *Charter of Rights and Freedoms*, caused the dismissal in Ontario of several thousand charges without trial. The unexpected result in a certain area of that province has been a complaint that local Crown attorneys have declined to take part in plea bargaining, a term which in the present climate of euphemism will no doubt be superseded by "plea negotiation". It may be too late to condemn this type of arrangement, unheard of not so many years ago, but the practice of involving the judge in these negotiations must surely be frowned upon. This generally involves both counsel seeing the judge in chambers before a guilty plea is entered to secure his cooperation in imposing a pre-determined sentence. Such a procedure suggests concealment and it is a remarkable tribute to the high reputation in which our judges are held that it does not suggest corruption. If indeed the judge should by some misadventure become party to such an agreement of counsel, the whole matter should, subject to the observance of justifiable confidences, be explored in open court.

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[174] 75 O.R. (2d) 673.

Avoidance in Principle

The question of prosecutorial discretion, which in the negative sense means staying or withdrawing charges laid by the police because in the opinion of Crown counsel a conviction cannot be obtained, must be explored at length and under other heads. Suffice it to say here that there is, in my respectful view, no justification for arrears of criminal business in the courts of Newfoundland other than acquiescence by Court and Crown in delays sought and secured all to easily by counsel for the defence; and I would set the "back-log" excuse on one side, especially as it might be expected that thirty Supreme Court judges and twenty-six Provincial Court judges in a community of half a million people could easily, with the assistance of the provincial bar, address any such problem and settle it with dispatch. What then is left? Plainly it is the reluctance of prosecutors to let difficult cases which might well result in acquittals go to trial before judge and jury or judge alone. Presumably if the police have had reasonable grounds to lay a charge the prosecutor must in the great majority of cases take the same view, and let the court decide in proceedings open to the public whether the evidence is sufficient to bring the case home to the accused. In this connection the often repeated maxim: "the Crown never wins and the Crown never loses" assumes fresh emphasis. The public expects the law to be enforced by the state, and breaches of it not to be prematurely cast into the scale of speculation as to the result.

The commission has been advised of a general feeling that the criminal justice section of the department of justice is understaffed and that its members have unmanageable caseloads. There is a companion complaint that agents of the attorney general, normally in private practice in outlying parts of Newfoundland and Labrador are in some cases not effective as prosecutors, and that they should be replaced by permanent employees of the department. There is no doubt that up to a certain point efficiency would be promoted by an increase in the number of Crown attorneys, but there does not seem to be any justifiable reason for ceasing to rely on private practitioners to conduct prosecutions where it is convenient and economical. Indeed it has long been a tradition in England for the treasury solicitor to brief practising barristers to conduct prosecutions, although in view of the separate activity there of barristers and solicitors a comparison is not always helpful. In earlier days in the common law jurisdictions across Canada the retaining of counsel in general practice to conduct a whole assize or special prosecutions for the Crown was commonplace and the modern tendency to incorporate Crown counsel into the civil service does, in my respectful view, tend to divide the criminal bar into a prosecuting bureaucracy on the one hand, and a self-conscious defence community on the other. To be effective, an advocate should have experience of both roles, if only to appreciate the problems confronted by both prosecutors and defenders, and to render less likely the creation of an intellectual gulf separating the institutional and private bars. To lawyers observing the traditions of independence and influenced by the fraternal traditions of many generations, an unyielding division of function such as now exists, and is being fostered by governments, cannot be appetizing, and perhaps is responsible for the tendency for Crown lawyers to leave the public service to seek fulfilment in private practice. This wastage is not peculiar to any particular province but is widely felt across the country.

The position of the social worker in the department of social services suggests some similarity with that of the lawyers in the department of justice, but in many respects the comparison is superficial. In any event this is not the place to deal with the problems of the social workers, their nascent professionalism and the numerous recommendations I have received from bodies in the field of social work. But the comparison may not be inexact if one considers the question of understaffing. This problem is created not simply by failing to provide sufficient establishment but by failing to use the establishment provided and furnishes another example of government policy being sufficient as expressed and advertised but government practice falling short of the policy proclaimed. An important example may be found in the criminal law establishment in the department of justice where the permanent staff complement for 1989 - 1990 provides for twenty-six solicitors for the whole province, eleven of whom were in practice allotted to the "eastern office" at St. John's commonly known as "headquarters". I am advised that in November 1990 there were only eight - or for practical purposes seven employed at headquarters. Since agents in the normal course only deal with the trial of minor offences this means that in the Supreme Court alone, staffed by thirty judges, all criminal prosecutions devolve upon the shoulders of a mere handful.[175] If the disparity between establishment and numbers employed is created by policy, it cannot be overlooked as an item in the catalogue of those which contribute to avoidance of due process of law. If it is caused by the discontent of the incumbents with pay and professional opportunity it demands equal attention. Who under these circumstances would not be tempted to accept, for instance, a plea of guilty to a charge of assault causing bodily harm, instead of enduring a time consuming trial of murder or manslaughter, or be satisfied with a conviction for simple assault where the circumstances require that it should be aggravated and sexual?

As a general observation in answer to the question put in article III it may be said that government departmental policies in the case of social services and justice are at present sufficient to prevent avoidance of due process of law if applied with reasonable vigour and dispatch, always providing that understaffing, in the sense of leaving established positions in the public service unfilled, is not policy but only an aberrant practice.

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[175] Speaking as a member of the Police Response Panel on June 20, 1990, Mr. Colin Flynn, D.P.P. said there were then eight vacancies in the complement of twenty-six solicitors.

Police Response to Avoidance

Two developments of recent date in the field of police policy have served to affect law avoidance. Reference must again be made to steps taken by Judge Hyslop and Mr. Colin Flynn to restate the position of officers of the Royal Newfoundland Constabulary when laying charges and to discourage the practice of consultation with Crown attorneys before doing so except in cases of the utmost complexity. This question has been referred to in chapter IV and is examined at length in chapter IX below. Secondly as both Superintendent Leonard Power of the Constabulary and Superintendent Emerson Kaiser of the R.C.M. Police have testified it is now the general practice to seek the co-operation of social workers in the child welfare division in interviewing suspected victims of child abuse, although this view has only recently been translated into official policy, in some cases arousing considerable dissent.

Official policy for the Constabulary was expressed in the form of directives and memoranda issued from time to time until 1990 when it was replaced by a "Policy and Procedures Manual",[176] the introduction to which instructed all ranks that the manual was in effect a collection of previous directives and memoranda and that "personnel should review all memorandums in their possession to see if they are included in the manual. Memorandums not noted in policy should be retained and those that are should be discarded". This would not appear to be a very helpful instruction, assuming as it does that every member of the force has retained in his or her possession all the memoranda issued, but this is by the way.

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[176] Exhibit C-0415.

In November 1982 and March 1983 Chief of Police Roche was concerned with the police following up contacts with victims of crime. An operative paragraph is selected out of lengthy operational directive no. 1.87:[177]

> **"In all instances, *especially when serious matters* are reported, the assigned investigator will be required to contact the victim before closing the file and record the gist of the conversation on the last entry placed on the 002 form ... Readers concluding cases are to contact the victim and record the information on the 002 form as noted above."**

Then on March 7, 1983 Chief Roche had occasion to issue operational directive 1.96 entitled "Complaint Response":[178]

> **"In recent months I have received several letters very critical of the Force because police failed to respond when complaints were made to us. The incidents were generally not of a serious nature, but nevertheless the criticism was severe. A continuation of our present method of dealing with less serious matters must be changed in order to protect the overall good image of our membership which is held by the community at large.**
>
> **One must remember that something which is relatively unimportant to us may be the most serious thing happening in the life of the complainant.**
>
> **I fully realize that this Directive may well overburden you in some respects, but this action must be taken if**

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[177] Exhibit C-0525, p.21.

[178] Ibid, p.31.

> **we are to reduce the continuous criticism being directed toward us for nonresponse to minor complaints.**
>
> **The policy, in future, will be as follows:**
>
> **(a) All calls received at the Communications Center when a crime is in progress, or has been committed, must be responded to by the area unit where the incident occurred.**
>
> **The respondent must speak with the complainant and inquire if witnesses, etc., can be identified.**
>
> **(b) Files assigned to Investigators for investigation.**
>
> **In all instances the complainant must be *interviewed in person*, unless the person has left the jurisdiction policed by the Royal Newfoundland Constabulary. In some instances special consideration may have to be considered for the member to travel outside our jurisdiction.**
>
> **(c) Complaints for insurance purposes only.**
>
> **No complaint, for insurance purposes only will be recorded unless the alleged theft is confirmed by the responding unit."**

It is not clear how the responding member of the force is to ascertain what complaints are for insurance purposes only, or why such a complaint should be considered separately from a regular complaint of alleged theft.

The first operational directive on child abuse by the Constabulary of which there is evidence before the commission was no. 1.129 of November 13, 1985 proceeding from Chief of Police D. Randell. It is a document of critical importance to the development of police policy in this field and no apology is made for quoting it extensively. The subject is dealt with at first generally and as follows:[179]

> **"The problem of Child abuse, both physical and sexual, is clearly recognized as an area of increasing concern by all levels of Society. The Royal Newfoundland Constabulary shares this concern and recognizes the need to provide better protection for abused children. To achieve this goal we must coordinate our efforts with Child Welfare Officials, the Medical Profession, Legal Profession, and others having a direct responsibility in the area.**
>
> **The principle of this Policy, will, therefore, be one of improved operational procedures through cooperation with others towards the protection of children."**

There follow instructions as to training which I omit because they were not carried forward into the policy and procedures manual with which some comparison must be made, but item 2 headed "Prevention" reads:[180]

> **"The RNC Crime Prevention Unit will continue to develop and initiate programs for the protection of children. Emphasis will be placed on coordinating programs in cooperation with other concerned groups, e.g. Child Welfare Workers, Medical and Legal Professions.**

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[179] Exhibit C-0525, p.81.

[180] Ibid, p.82.

> **(a) The RNC will conduct a prompt detailed and thorough investigation in every case of alleged Child Abuse.**
>
> **(b) Child Abuse will be considered as "Major Crime" by the RNC. The Assault and Homicide Section of the C.I.D. will be responsible for all such investigations.**
>
> **(c) In accordance with Section 49(1) of The Child Welfare Act all cases will be reported promptly to the Director of Child Welfare. If deemed necessary, the initial report can be by telephone, or personal contact. This will be followed by a written report on Form 060.**
>
> **(d) Contact will be made with Crown Counsel as early as possible after the initial complaint. This consultation can be by telephone to advise that such an investigation has been initiated.**
>
> **(e) All Justice Reports relating to Child Abuse are to be completed and submitted to the Justice Department as soon as possible. They are to be "RED FLAGGED" for immediate attention.**
>
> **(f) During the entire investigative process, and any eventual court process, the Investigating Officer will maintain close contact with the Child Welfare Worker and Legal Counsel assigned to the child abuse case."**

Item 3, "Interviewing the Child", illustrates the contemporary reservations about joint interviews.

> **"(a) The number of interviews conducted with a child should be kept to a minimum. To this end, non-**

investigative members responding to initial complaints will endeavour to obtain the necessary information from parent or guardian, unless the situation requires an immediate interview with the child victim.

(b) An interview with the child should take place at the earliest possible time following receipt of complaint.

(c) Whenever practical, C.I.D. members responsible for Child Abuse Investigations will respond to the initial complaint and conduct all interviews.

(d) Whenever possible, interviews with the child will be conducted jointly with a Child Welfare Worker."

The directive continues and concludes:

"ITEM #4: Assistance to Victim and Family

(a) The responding member in child abuse case will give priority attention to the physical and psychological well-being of the child and non-accused family members. Immediate medical attention should be a prime consideration, even in the absence of physical injury.

(b) The offender should be removed from the scene by means of arrest, whenever legal grounds exist for such action.

(c) When arrest, or voluntary removal of the alleged offender is impossible, or impracticable, removal of the child should be considered under the protection of the Child Welfare Act.

Whenever there exists a situation where children, other than the victim, are vulnerable

> **to abuse, the protection of these children will be of prime consideration. Child Welfare Officials will be directly involved in this process.**
>
> **ITEM #5: During any ongoing investigation the investigating member will maintain close contact with the victim and family regarding:**
>
> **(a) steps taken in relation to the case**
>
> **(b) what to expect during the investigation and possible court appearances**
>
> **(c) appropriate social services, victim services, legal services, and medical or therapeutic agencies**
>
> **(d) arrangements for pre-trial interviews between Crown Counsel, victims and other witnesses**
>
> **INTER-DEPARTMENTAL COOPERATION**
>
> **A member of the Royal Newfoundland Constabulary will be designated to coordinate Force Policy with the Department of Social Services (Child Welfare Division), Department of Justice, and other professionals involved in Child Protection.**
>
> **It is understood that Department of Social Services and Department of Justice will be making similar designations in order to facilitate an integrated approach to Child Abuse Cases."**

This directive is in substance incorporated in the policy and procedures manual[181] with amendments and additions, e.g.

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[181] Exhibit C-0415: Excerpts.

providing for the securing of photographic evidence in the case of battered children and with some administrative instructions about special application to the Corner Brook and Labrador divisions. The cautious direction: "Whenever possible, interviews with a child will be conducted jointly with a Child Welfare Worker" contained in the 1985 directive, is repeated in the manual although it is now generally accepted that there should be no exceptions to joint interviews by police and social services personnel.

Superintendent Kaiser testifying on June 26, 1990 introduced into evidence before the commission a volume entitled "Certain Royal Canadian Mounted Police Policies and Procedures Dealing with Child Abuse".[182] This exhibit consisted of extracts from the various volumes of policy used by the operational side of the force, prepared by him with help from Corporal Lloyd Fry, R.C.M. Police. Under section B, representing policy developed for Newfoundland by "B" Division two directives illustrate a remarkable change of policy between 1986 and 1989. A bulletin dated December 2, 1986 numbered OM-330, presumably with the effect of amending the operational manual, has the following under "Sexual Assault Investigations Involving Children":[183]

> **"1. General**
>
> **a. There has been an increased tendency by investigators to unnecessarily involve Social Workers in the interviews of young persons who are suspects/witnesses in these investigations.**

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[182] Exhibit C-0610.

[183] Ibid, p.54.

> **2. Unit Commander**
>
> **a. Whenever possible, interviews of suspects /witnesses should be conducted by an investigator(s) in private.**
>
> **b. It may be necessary to conduct joint interviews (Police/Social Services) of victims when there might be a requirement for Social Services to provide follow-up services to the victim. This lessens the trauma of requiring the young victim to undergo two interviews.**
>
> **c. Ensure that investigators are aware the investigative process must remain a police responsibility."**

This may be compared with a later directive not labelled "bulletin", but explicitly involving the operational manual, dated November 11, 1988:[184]

> **"R. 2. Unit Commander**
>
> **R. 2. a. When you become aware of child abuse or any offence against children:**
>
> **1. Notify your local social worker as soon as possible. Do not wait until your investigation is completed.**
>
> **2. Submit reports on all offences against children to Division Headquarters within 21 days of notification of the offence.**

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[184] Ibid, p.44.

3. **Take appropriate court action when evidence justifies a charge.**

R. 3. Child Sexual Assault

R. 3. a. The reporting of sexual assaults on children is increasing each year and is a high profile area of enforcement.

1. **Notify Social Services when a report of child sexual assault is received.**
2. **Arrange for a joint interview of the victim with a representative of Social Services.**
3. **Submit message to Div. HQ Criminal Operations.**
4. **Follow-up reports will be requested for the following:**
    1. **sexual intercourse under 14 years,**
    2. **incest,**
    3. **high profile case where professional person involved, i.e. doctor, clergy, dentist, school teacher, custodian of foster home, day care center, etc.**
    4. **Other cases as may be requested by Criminal Operations,**
    5. **Take appropriate court action where evidences justifies a charge."**

In the second and current directive interviewing of the victim jointly with a representative of social services is taken for granted. A very effective pamphlet published by the force's public relations branch, with acknowledgements of permission to reproduce from the solicitor general of Ontario and the Ontario Provincial Police entitled "Child Sexual Abuse"[185] was distributed to all members of the force in "B" division with a special insert for "the Province of Newfoundland and Labrador", reminding all recipients of the provisions of section 49(1) of the *Child Welfare Act*, requiring that "every person having information of the physical ill-treatment or need for protection of a child shall report the information to the director of child welfare". Strikingly, the provisions of subsection (3) containing information as to the penalty is not included, and surely should be if the members of the force are to educate the public as to their obligations under section 49 and show that its provisions are not merely a pious exhortation.

The documents furnished to the commission by Superintendent Kaiser comprehensively covering R.C.M. Police policies and training[186] dealing with child abuse show a high level of expertise, real and potential. It is not necessary to make further quotations but I cannot refrain from citing one from a series of questions submitted to Superintendent Kaiser by Mr. Powell, replied to in writing,[187] and introduced into evidence on June 26, 1990.

> **"5. Is the RCMP aware of any case in Newfoundland where an agreement was reached by persons in authority with a person suspected of committing any criminal offence whereby, if the suspect**

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[185] Exhibit C-0610, pp. 47 - 53.

[186] Exhibits C-0610 to C-0617.

[187] Exhibit C-0611.

> **left the province, criminal charges would not be laid?**
>
> **Response:** **Of my 30 years as a member of the RCMP I have worked in Newfoundland for 25 years. I have worked at various locations and continuously since 1986 at the Headquarters level. Based on my experience, I am aware of no such arrangement."**

Another question and answer should not be overlooked in view of the questions posed in the commission's terms of reference:[188]

> **"7.** **In the view of the RCMP, are there any measures or policies which should or could be implemented to improve the system of Criminal Justice in Newfoundland?**
>
> **Response:** **Not in my opinion. The RCMP have and exercise the right to lay charges where such action is made out on the facts and we recognize the Crowns *(sic)* right to stay or withdraw if, in their opinion, this action should be taken. I would add that very seldom is there any disagreement between the RCMP and Crown, however, we have a system in place where the RCMP Headquarters and the DPP would examine the issues and arrive at a resolution should a disagreement occur."**

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[188] Ibid.

The Police Response Panel

One of the devices employed by commission counsel towards the end of the public hearings was the constitution of panels of experts to offer suggestions and to give the commission the benefit of their experience in various fields. These discussions produced information of value not given in the usual course by witnesses on oath, particularly since the panellists were able to profit from an exchange of views among themselves and the tendency which such an exchange promotes to find common ground. One of the panels consisted of two senior police officers who had previously testified on oath on several occasions, Superintendent Power of the R.N.C. and Superintendent Kaiser of the R.C.M. Police and Mr. Colin Flynn, Director of Public Prosecutions, who prior to June 20, 1990 when the panel convened had not previously appeared. It will be recalled that Power has been commander of the Criminal Investigation Division of the Constabulary since 1986 and Kaiser, Criminal Operations Officer for "B" division of the R.C.M. Police; both of these senior officers have had extensive experience of police work in Newfoundland, Power for all of his career of twenty-six years and Kaiser for twenty-five out of thirty years of his in Newfoundland and Labrador. Mr. Flynn with a Master of Arts degree from Memorial University, a Bachelor of Laws degree from the University of Saskatchewan and the degree of Master of Science in Legal Studies from the University of Edinburgh, has spent his professional life on the criminal law side of the department of justice and has been the director of public prosecutions since 1988. The focus of the panel was upon police response in investigation and prosecution of complaints, particularly, although not exclusively, complaints of physical and sexual abuse of children. The panellists were questioned by Mr. Day and Mr. Powell for the commission, by Mrs. Eve Roberts, Q.C. on behalf of the Provincial Advisory Council on the Status of Women and by Mr. George Horan for the Government of Newfoundland and Labrador. Mr. Powell also put some questions on behalf of Miss Gwen Mercer, a participant.

Public awareness of the menace of child abuse has increased dramatically particularly since the reopening of the Mount Cashel investigation and as a result of this commission's inquiry. For the Constabulary as observed before, mainly a municipal force policing St. John's, Corner Brook, Labrador City and Wabush, the major crime section has reported:

1988	**child sexual abuse**	**175**
	child physical abuse	**not available**
1989	**child sexual abuse**	**251**
	child physical abuse	**40**
1990	**child sexual abuse**	**246**
	child physical abuse	**62**

The situation of the R.C.M. Police in Newfoundland and Labrador is very different in that there are forty-seven units, many with as few as two or three members widely dispersed in rural and semi-rural communities around the province. A comparable figure from the R.C.M. Police has not been supplied,[189] but Superintendent Kaiser confirmed counsel's suggestion that there were 935 complaints of sexual assault of one kind and another to his force in the course of 1989. The superintendent said further when asked the following question:

> **"Q. .... First of all, Superintendent Kaiser, in your experience the majority of the complaints alleging child mistreatment come from Social Services or come from the public, whether that be the doctor, the teacher, or the next door neighbour?**
>
> **A. Without looking at the facts from that point of view and just reacting from memory and from my experience over the last couple of years in this particular chair and thirty years as a policeman, I would have to think it is a very good mix. That you would certainly get fifty percent that would come forward from school teachers or from the family itself or from the victim. And probably the other fifty percent and I wouldn't want to be held as absolute on these percentages, the rest would be from Social Services."**

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[189] Subsequently supplied by Superintendent Kaiser as follows:

	1988	1989	1990
Sexual Assaults Reported	not available	995	940
Actual Offences	494	791	780
Victims Under 18 years	162	360	501

The same question was put to Superintendent Power who replied as follows:

> **"A. Yes, I agree with Superintendent Kaiser. In recent years I think, in our jurisdiction at least we seem to be getting a lot more referrals from the department of Social Services, the Child Protection Unit, I suppose mainly because of the creation of that unit and the expansion of that unit. I would also say that it is my view that teachers and other professionals in positions to beware of child abuse, now seem to be more aware of the requirement to report child abuse to the Director of Child Welfare and I think that may be one of the reasons why we are getting an increase in referrals from Social Services. I think a lot of people now know that if they are aware of child abuse they must report it to the Department of Social Services. So as opposed to coming to the police they go to the Department of Social Services. Now I don't know what the mix is as Superintendent Kaiser said."**

Both officers assured the commission that all complaints, even though as Superintendent Power said "of a very tenuous indication" were investigated, and particular attention was paid to referrals from the child protection unit of the department of social services. Although both asserted that there was now a very close liaison with social workers in the matter of complaints of child abuse, Mr. Flynn stated flatly in reply to Mr. Day's question:

> **"When a police report investigating an allegation of child mistreatment comes to the criminal side, if I can refer to it in that way, is there at present any practice,**

> **policy, that permits these reports to go to the Department of Social Services either the director at headquarters, the regional office, or the district office?"**

in the following way:

> **"The policy is that the criminal reports are criminal reports and are not shared with the department of Social Services. And the practice as I am aware of it is that they are not shared."**

There are of course many grounds for not compromising the confidentiality of police reports, prevention of avoidance of due process of law through premature disclosure to a suspect being an obvious one. Nonetheless the child welfare division should in my opinion have a regular procedure for being advised on matters pertinent to its mandate when a proper application is made to the department of justice and when there has been no direct communication between it and the police. In other words, the provisions of section 49 of the *Child Welfare Act, 1972* apply to the police as well as the public.

* * *

Consolidating the Response

It now appears that a thoroughly beneficial measure of agreement has been reached among the two departments - justice and social services - and the two police forces constituted to enforce the law in Newfoundland, and to take steps to prevent its avoidance, in four important particulars: first, concentration on the problem of child abuse represented by a child abuse unit in the major crime section of the C.I.D. in the Constabulary; secondly a child protection unit in the department of social services; thirdly, the conduct of joint interviews with social workers of alleged victims of child abuse and fourthly a determination, not yet fully developed, to establish a victim and witness assistance programme, the last being unsettled as to where it should be administered and by whom it should be staffed. As to the first I am advised that the special unit in the major crime section has become a "sexual offences" unit and if this is so it runs the risk of having its focus widen at the cost of dispersing its resources. The major crime section at the time of writing is composed of fourteen officers: one lieutenant, one staff sergeant, two sergeants and ten constables. In addition to investigating sexual offences generally the section is called upon to deal with homicides including sudden deaths, suicides, robberies, industrial accidents, suspicious persons, and harassing or obscene telephone calls. Allegations of theft, fraud, breaking and entering and "drug offences" are considered, one assumes, to be matters of routine and might well be joined by industrial accidents, suspicious persons and harassing or obscene telephone calls and entrusted to the patrol division. However that may be resolved in the case of the Constabulary, it would appear that at least until statistics show a marked reduction in allegations of child abuse, a special unit concentrating on that problem to the exclusion of those of other sexual offences should be constituted. There are clearly defined limits imposed by the Supreme Court of Canada on the ability of a provincial commission of inquiry to explore the policy of the R.C.M. Police but a commissioner may be permitted to note the fact that the General Investigation Services of "B" Division, with sections at headquarters and in

Gander and Corner Brook, can be deployed, as Superintendent Kaiser testified, when the individual units stationed in Newfoundland and Labrador need assistance. Whatever comparisons may be drawn between the ability of these two forces to concentrate on child abuse cases there is no doubt that the essential ingredient for success at this stage is training. Here there is no question that the R.C.M. Police have greater resources in money, personnel and programmes and that determined efforts must be made to put the Constabulary's specialists in child abuse on a footing equal to that of the federal force.

An outstanding example of this disparity is training in the use of the video camera, not only as an instrument in itself which can be readily mastered, but in the arrangement and recording of interviews and of evidence in court as now sanctioned by the Criminal Code. Training in this respect involving a small unit of specialists need not be expensive, and should, if possible, be undertaken in the company of R.C.M. Police and social worker personnel; if there are jurisdictional problems there should be no hesitation in resorting to foreign attachments. I am aware that all these possibilities are being borne in mind by dedicated officers who are at the same time confronted with understaffing and mounting caseloads, relief from which should be afforded amply and at once. At the same time it is my respectful view that techniques in dealing with sexual offences, other than that of child abuse, are familiar and do not require the thrust that child abuse cases cry aloud for. There is the additional consideration that cases of child sexual abuse and child physical abuse must be considered together and allegations of both offences investigated by the same specialists operating in one unit. It is not clear that current provisions for a sexual offence unit takes this distinction into account.

I have confined myself in this chapter to matters involving avoidance of due process of law as directed in article III of the terms of reference. It would have been possible to prolong it almost indefinitely because of the inter-relation of matters raised in both article III and article IV, and perhaps in the general direction to make recommendations for improvement in the administration of justice. I propose to conclude the chapter by making a number of recommendations which are pertinent to the matters discussed, but first one unusual and perhaps incredible response arising from the discussion with the Flynn-Power-Kaiser panel should be mentioned. During the sittings on June 20, 1990 Mr. Day produced for that panel a document entitled "Interdepartmental Statement on Child Abuse".[190] This was a declaration dated January 5, 1987, and signed in the city of St. John's by five members of the ministry then in office namely the Honourable R.C. Brett, minister of social services; the Honourable W. Matthews, minister of culture, recreation and youth; the Honourable L. Hearn, minister of education; the Honourable H. Twomey, minister of health, and the Honourable L. Verge, minister of justice and attorney general. The text is as follows:

> **"The children of the Province of Newfoundland and Labrador are of paramount importance and have the right to love, affection and understanding, as well as an environment which encourages their positive development and selfworth. The increased reported incidents of child abuse and neglect within the Province of Newfoundland and Labrador highlights the**

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[190] Exhibit C-0556.

need for interdepartmental co-operation and co-ordination, as well as a very strong supportive role which community agencies and the general public can play in the treatment and prevention of child abuse and neglect.

A child in need of protection is broadly defined under nineteen specific sections of the Child Welfare Act and includes such situations as lack of reasonable supervision and protection for a child or failure to provide a child with the basic necessities of life.

Child Abuse is included within the definition of a child in need of protection and includes any situation in which a child is suffering serious physical injury inflicted by other than accidental means and includes physical assault and sexual abuse.

Responsibility to protect children is a shared responsibility between many departments including the Department of Social Services, Department of Culture, Recreation and Youth, Department of Education, Department of Health and the Department of Justice. This responsibility is also shared with the community at large, with other community agencies and with every family in the Province of Newfoundland and Labrador. Because of our mutual well-being of all the children of the province, the following statements of agreement are presented.

- Within the Child Welfare Act, 1972, there is a clear legal responsibility for every person who has reasonable grounds to believe that a child is being abused or is otherwise in need of protection, to report this to the Director of Child Welfare. This reporting requirement gives precedence over any previous commitment to confidentiality and it is an offense for failure to report such incidents. Such reports may be made to the local office of the Department of Social Services

- **The Department of Social Services has a legal duty to protect children from abuse and neglect and work in conjunction with other departments and community agencies to support families and to protect children.**

- **The Department of Justice is responsible for the administration of justice in the Province. Both the Royal Canadian Mounted Police and the Royal Newfoundland Constabulary are accountable to the Minister of Justice and are responsible for the prompt and thorough investigation of alleged mistreatment of children with a view to initiating prosecutions under the Criminal Code of Canada. Crown Attorneys are responsible for the conduct of such prosecutions before the Courts.**

- **Whenever one has reason to believe that an offence has been committed against a child, the situation should be promptly reported to the local police force.**

- **The Department of Education is in a very unique position to observe children and to identify situations of child abuse or neglect at a very early stage. As well, teachers can assist children to cope with problems at home as well as providing information and education regarding child abuse and neglect which will assist children to be better equipped for their role as the parents of tomorrow.**

- **The Department of Health has community health nurses, family physicians, specialized medical and mental health programs that provide direct service to any families and children, and because of concern for the overall health and development of all residents of the province, can be extremely effective in not only the identification and treatment** of such situations but in the prevention of child abuse and its antecedents.

- The Department of Culture, Recreation and Youth has a broad mandate to respond to the needs of the young people of the province and provides leadership in activities and programs which helps prevent situations where children would be at risk of child abuse and neglect.

- It is recognized that the five government departments have separate roles and special responsibilities in specialized areas. There is, however, a shared concern as well as a shared commitment to work together in increasing awareness with regard to this problem, in co-ordinating services and policies, and in endeavoring to increase the effectiveness of programs and services offered to children and families. Such objectives can be achieved by conjoint training endeavors, as well as the preparation of a handbook for usage by all government departments who have responsibility in this area.

- It is recognized that to achieve the very worthwhile objectives of treating and preventing child abuse and neglect, imput *(sic)* from the community is essential including the early identification of risk situations, as well as co-operation in the co-ordination of community services.

- In the treatment of reported cases of child abuse, the necessity for a co-ordinated approach, particulary with regard to the interviewing of victims and their families, is strongly endorsed and wherever feasible, the Department of Social Services and local police forces will co-operate with joint interviews.

> **The focus of the interdepartmental approach to the problem of child abuse and neglect will have as its primary goal the protection of the child with support and services being provided to enhance the family functioning wherever possible.**
>
> **An effective response to treating reported cases of suspected child abuse and neglect requires an interdisciplinary approach which utilizes the best resources of all professions and from all government departments. It is our hope that this interdisciplinary approach to the problem will help ensure the protection and well-being of the children of the province of Newfoundland and Labrador."**

It might be supposed that this was a seminal document from which much may have flowed in connection with the efforts to cope with the problem of child abuse in succeeding years. In particular the paragraph describing the part to be played by the department of justice, one might think could hardly escape the attention of a panel composed of a senior officer of the department and of the two commanders of criminal operations in the police forces of Newfoundland. But they all agreed that they had not seen or heard of this document until it was shown to them by commission counsel on the previous day.

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Recommendations arising from matters discussed in this chapter are as follows:

Recommendation 3:

Close observance of the provisions of the *Child Welfare Act, 1972* should be consistently maintained by the Child Welfare Division of the Department of Social Services and unauthorized practices and expedients not implemented until authorized by either amendments to the statute or by regulations made thereunder.

Recommendation 4:

The Director of Child Welfare and the police forces of the Province should forthwith begin to lay charges under section 49 of the *Child Welfare Act, 1972* in cases where they have reasonable grounds to believe that reports of child abuse, as required by the said section, have not been made.

Recommendation 5:

The provisions of section 11.1 (7) of the said statute to the effect that an order made under section 15 shall recite the facts so far as ascertained in an investigation under the latter section and that the presiding judge shall deliver a certified copy of the order to the said director should be observed by judges in courts over which the Province of Newfoundland has jurisdiction, and such judges should give their reasons in writing for making or declining to make the orders sought.

Recommendation 6:

If Recommendation 5 is adopted and section 11.1 (7) amended as suggested non-compliance therewith should not be considered acceptable and an order by way of *mandamus* should be sought in the Supreme Court of Newfoundland.

Recommendation 7:

The Director of Child Welfare should act as intended by the House of Assembly in enacting section 3 of the *Child Welfare Act, 1972* providing that he or she shall be appointed by the Lieutenant Governor in Council and empowered to administer and enforce the act "under the control and direction of the Minister" enjoying direct access to the minister and freedom from direction in matters of policy by the deputy minister with whom he or she should be equal in status in all matters over which the said director is given authority by the statute.

Recommendation 8:

The *Child Welfare Act, 1972* should be amended to validate arrangements for care of children between the Director of Child Welfare and parents, guardians or persons providing foster-care not at present expressly authorized therein.

Recommendation 9:

Section 47 of the *Child Welfare Act, 1972* should be amended to provide that in any such arrangement the said director must assume the status and duties of guardianship in respect of a child under his or her care and control.

Recommendation 10:

Caseloads of solicitors in the Department of Justice should be reduced by immediate recruitment to established positions not now filled, and the provision, if necessary of a special salary scale not conforming to any generally applicable scheme of public service pay as exemplified by provisions made for advisory counsel in the Department of Justice of Canada.

Recommendation 11:

Crown attorneys and all agents of the Attorney General of Newfoundland should ensure that plea negotiation involves only counsel for the Crown and counsel for the defence, that the facts, course and expected result of such negotiations should be disclosed to the judge presiding at any trial material to such negotiation in open court, and not discussed with him or her at any time in chambers or otherwise.

Recommendation 12:

Where expedition and the reduction of caseloads of Crown attorneys situate either at headquarters of the Department of Justice or anywhere else in the Province of Newfoundland are required the Director of Public Prosecutions should retain the services of members of the bar in private practice to act on behalf of the Attorney General.

Recommendation 13:

Members of the Royal Newfoundland Constabulary assigned to the Major Crime Section of the Criminal Investigation Division should receive training in all the procedures and techniques necessary to enable them to detect, investigate and testify in respect of the sexual offences defined in those sections of the *Criminal Code of Canada* introduced by an *Act to amend the Criminal Code* and the *Canada Evidence Act* S.C. 1987, c.24; R.S.C. 1985, c.19 (3rd Supp.) to standards the same as or equivalent to those observed by the Royal Canadian Mounted Police without delay.

Recommendation 14:

The Director of Public Prosecutions should forthwith make arrangements for the contents of police reports in any case of physical or sexual abuse of a child to be made available to the Director of Child Welfare, subject to such reservations that may properly be based upon the requirements of security to ensure effective prosecution of offenders.

Recommendation 15:

As a corollary to and in contemplation of the implementation of Recommendation 14 the Director of Child Welfare should make available to the police the contents of the register of child abuse cases now maintained in the Child Welfare Division for statistical purposes.

Recommendation 16:

A child abuse unit under such name as may be considered inoffensive and desirable be maintained in the Major Crime Section of the Criminal Investigation Division of the Royal Newfoundland Constabulary to investigate, report upon and charge in cases involving the sexual and physical abuse of children, being unmarried boys or girls under the age of sixteen years separate and apart from any subdivision of the said section dealing with sexual offences not so specified.

Chapter IX: The Chance of Prevention

Article IV of the terms of reference of this commission reads as follows:

> **"To determine what measures or policies, if any, should or could be implemented to prevent a recurrence of the events which gave rise to this Inquiry."**

The events in question are those described in chapter III of this report under the heading "The Mount Cashel Investigation: December 1975" and in chapter IV under the heading "Reopening the Investigation: March 1989"; but one must assume that the problem of child abuse in institutions and the prosecution of offences related to it cannot be excluded entirely from the discussion even though a high standard of relevance should be observed. The words "relevant" and "irrelevant" which from time to time came to the surface in public hearings of the commission frequently produced looks of bewilderment except among the lawyers engaged. "Relevant" may be defined as bearing on or pertinent to the matter in hand and the matters in hand in this case are set forth in the commission's terms of reference. Relevance is crucial in an inquiry or case in court in which it is the basic test for admissibility in evidence. In appendix K there is set out a condensed list of the recommendations made to the commission by associations and individuals, with and without standing, many of which are irrelevant to the terms of reference and cannot be considered even though they and the reasons behind them were fully aired in the public hearings of the commission.

The Chance of Prevention

Even though most of the institutions housing wards of the Director of Child Welfare are closed or closing and as has been noted, increased reliance is being placed upon group homes and private placements, those who indulge in physical and sexual abuse of children may be expected to operate as opportunity offers particularly when their natural inclinations of kindness and propriety are dulled by the consumption of alcohol. Whether their perversions are curable or even treatable is doubtful, especially in the case of paedophiles. In my respectful view public funds should not be employed in treating or attempting to treat people animated by evil, though professing sickness, personality disorder, mental imbalance and so on and so forth. It may be the pleasure and the interest of the state to attempt rehabilitation, and in most cases more than an attempt there cannot be; but it is the duty of the state to punish the infraction of its laws and that duty is no less acceptable when these infractions are caused by cruelty and lust which is wreaked upon children, incomprehensible to its victims and tending to corrupt their childhood and destroy its happiness.

The disorders in Mount Cashel which have been described in this report with some restraint - not always displayed in other chronicles but with a view to maintaining the balance of the scales of justice - might never have occurred had there been available to the young boys in that institution the care and nurture of women, and the involvement of the Christian Brothers in their education alone. The tragedy of Mount Cashel is that men of blameless and perhaps saintly lives have been tarnished by association with men who have broken their vows, not inadvertently but deliberately and by stealth. One would hope that the possibility of recurrence has been much reduced by the lessons learned in the course of this inquiry and the police investigations which accompanied it, and by the increased vigilance which on all sides has been manifest in the detection and investigation of child abuse. The treatment of the victims is another matter and is full of difficulty. Those who have come forward to assist the commission at the cost of acute mental distress are perhaps the healthiest of the victims of abuse. It is logical to believe that a majority of the abused will never come forward and will never be known.

The ancients believed that history would always repeat itself; in later times we have become less sure that future phases of life will be predictable and recognizable when they materialize. But one policy may be fruitfully pursued by the providers of social services in Newfoundland and Labrador and that is never to lose touch with those whom it is in the public interest to protect; specifically never to allow an institution like Mount Cashel or Exon House or Whitbourne or any of the kind to claim a special position in the scheme of things and resist inspection and compliance with authorized procedures.

Prosecutorial Discretion

As a corollary to the proposition that the state has a duty to punish infractions of its laws - a duty arising from its obligation to provide for the safety of its citizens to put it no higher - the vexed question of prosecutorial discretion must be addressed, since it was under the guise of exercising this that Vincent P. McCarthy either promoted or acquiesced in the decision to halt the investigation of allegations of child abuse at Mount Cashel in December 1975. The case of *Regina v. Commissioner of Police of the Metropolis, ex parte*

Blackburn,[191] has provoked a now historic debate the echoes of which still reverberate. Have the police the unfettered right to lay charges in a case where they have reasonable grounds to believe that an offence has been committed, or must they submit their conclusions to a Crown prosecutor for his endorsement before they do?

I have no intention of attempting to review the course of the debate which has been maintained and documented by legal scholars and practitioners to this day, but once Lord Denning had given his ringing affirmative in the case of the first part of the question two protagonists in Canada entered the lists: the Honourable Roy R. McMurtry, Q.C. sometime Attorney General of Ontario and Canadian High Commissioner in London who adopted and embellished Lord Denning's opinion and Mr. Gordon F. Gregory, Q.C., Deputy Minister of Justice of New Brunswick, who did not. Since then the advocates of the untrammelled right of the police to charge, a position long maintained by the R.C.M. Police, have steadily gained ground and their views as already noted, were publicly embraced early in 1989 by the Department of Justice of Newfoundland. Now it can be said that only in New Brunswick, Quebec and British Columbia is the policy of prosecutorial review, and required endorsement of a charge contemplated by the police, still observed.

Nevertheless the line apparently cleanly drawn between the police and prosecutorial prerogatives in most of the common law jurisdictions in Canada has been blurred by unanimous recognition of the equally untrammelled right of the prosecutor to secure a stay or dismissal of proceedings arising from the charges laid, a discretion exercised for a number of reasons of which "public interest" heads the list. In this connection Mr. McMurtry again drew his sword in debate and in the case of the Honourable Francis Fox defended his decision not to prosecute the federal minister on the grounds of public interest, citing the expressed views of several distinguished ex-attorneys general of England. Is it possible that in this important aspect of enforcement the law giveth and the law taketh away? Evidently it is, and the views at present held by the Director of Public Prosecutions in Newfoundland and Labrador must be examined. In a memorandum entitled "The Decision to Prosecute" signed and distributed by Mr. Colin J. Flynn, Q.C. on April 24, 1990 to Crown attorneys of the criminal law division in the department[192] he reviewed his policy statement of May 2, 1989 "with respect to separation of police and prosecutorial powers" concluding as follows:

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[191] [1968] 1 All E.R. 763.

> **"Once a charge has been laid, then the onus switches to the law officers of the Crown to determine if there is sufficient evidence to proceed to trial. And, it is also the obligation of the law officers of the Crown to consider any public interest matters which might preclude prosecution. These are the general roles of the two main players in the criminal justice system and the differentiation of these roles. A more detailed view of these will be provided below."**

The director then analyses the problem under various heads beginning with "Prima Facie Case" and, on the assumption that there is jurisdiction to proceed and the police evidence is admissible in law, adverts to what the Crown must further consider when the police ask for its opinion.

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[192] Exhibit C-0555.

"As indicated above, the police may on occasion seek the advice of the Crown prior to the laying of an Information. This may be with respect to the sufficiency of evidence with regard to a particular fact situation. If such a request is made, the Crown has but one consideration in mind - is there on the evidence as provided reasonable grounds to believe that X has committed the offence. In order to determine this particular point, the Crown should generally be involved in a two-stage analysis:

i. Is it possible to proceed?

This involves two types of questions:

(1) Is there jurisdiction to proceed?

This issue is strictly a legal issue and relates to questions with respect to the type of offence (whether summary or indictable), type of court, where the offence was alleged to have been committed and other matters similar to these.

(2) Is the evidence which the police have uncovered admissible in law?

This is again a strictly legal issue and relates specifically to the question of the type of evidence that is available and whether such evidence can be admitted for the purpose of consideration by the trial judge. Some such evidence may be admissible. If the evidence available is not admissible, then of course the opinion would end there.

ii. If it is possible to proceed, does the admissible evidence raise a prima facie case?

As indicated earlier, the test in such circumstances is whether or not on the admissible evidence there are reasonable grounds to believe that X committed the offence as alleged. This is a very low standard, but it is one which is the test outlined in section 504 of the Criminal Code with respect to the grounds required of an individual before he swears an Information.

The process that the Crown goes through is to assess the evidence as it is presented, to apply the law as it is known at the time, and to ask objectively whether a peace office would have reasonable and probable grounds to believe that X committed a particular offence.

Once an objective conclusion is made with respect to the evidence and the law, then the police must be informed of the conclusion. If the opinion is that there is sufficient evidence to proceed, then the police must be told objectively that that appears to be so. However, the police officer must have his own subjective belief before he can swear an Information. This would include the knowledge of the law as he knows it or as it is presented in evidence. It really necessitates the officer deciding himself that issue based principally on the legal opinion that has been provided and the facts as he knows them.

If the Crown feels there is insufficient evidence to conclude that there are reasonable grounds to proceed, he should point out where the evidence is deficient and can also point out what types of evidence would be sufficient to raise its strength to a prima facie case. The police can then pursue the investigation further to determine whether such evidence exists. If no response is forthcoming, the

> **Crown should advise the Senior Crown of the difficulty and it will be pursued at a different level."**

So far so good, and orthodox too; but under the heading of "The Prospects of Conviction" the learned director proceeds:

> **"Once the Crown has concluded that there is a prima facie case, then if there is concern about the strength of the evidence available the Crown should go further in its opinion to the police. This involves the invocation of a higher standard than one of reasonable grounds to believe. It involves a question of the success of the prosecution based on the sufficiency of the evidence, the credibility of the various witnesses, the capacity of the witnesses and the types of onus that may be placed on the Crown and the accused in a particular set of circumstances."**

The image that is conjured up by the second and third sentences of this paragraph is one of arrogating to the Crown the function of the court, weighing the evidence and the credibility of the witnesses and, particularly in a jury trial anticipating what properly instructed jurors, all laymen by law, may decide as sole judges of the facts. But there is more:

> **"If the above noted factors are there to be assessed at the time the opinion is sought to lay an Information, the Crown may be in a position to assess them then and indicate to the police not only if there are reasonable grounds to believe but also the probability of a conviction. The Crown may have to indicate to the police that although there are in law reasonable grounds to believe, the evidence is so weak or the witnesses are so weak that there is no probability of**

> **conviction. In such a case, the Crown must indicate to the police that if a charge is laid, it will not be proceeded with by the Crown."**

What then is the position if a charge has been laid by the police on reasonable grounds that the offence has been committed, there is a *prima facie* case and only a *possibility* of a conviction in the opinion of the prosecutor? However serious the offence, however damaging to the victim, whatever the concern of the public as to its circumstances, the case does not proceed and is withdrawn from the courts, regularly assisted as they are by representatives of the community when juries are empanelled with the exclusive constitutional right to pronounce the words "guilty" or "not guilty".

The learned director then proceeds to discuss the difficult question of public interest, using the following words:

> **"This is the final question which the Crown must consider - is it in the public interest to proceed. There has always been a question as to whether any prosecution should be brought unless it is in the public interest. Public interest, in essence, is what the criminal law is all about. Prosecution of criminal matters are of public interest and it is only when it is deemed not to be in the public interest that even though there is sufficient evidence to proceed, a prosecution does not proceed."**

He acknowledges that in October 1989, at the annual meeting of Crown attorneys, he and his colleagues agreed, after examining criteria of public interest as stated by the "United

Kingdom Director of Public Prosecutions,"[193] to reduce them for local purposes, and enumerates them as follows:

> "i. **Staleness (age of the offence, type of offence, length of time before a complaint made, motive of the complainant, age and mental capacity of the complainant at the time of the offence).**
>
> ii. **Age of the Accused and Physical Disability of the Accused.**
>
> iii. **Age of the Victim and Physical Disability of the Victim.**
>
> iv. **Mental Incapacity of the Accused or the Victim.**
>
> v. **Victim's Stress.**
>
> vi. **General Wishes of the Complainant (especially in sexual assault offences and assaultive offences).**
>
> vii. **Seriousness of Offence (de-minimus principle).**[194]
>
> viii. **Whether the accused has co-operated with the investigation or prosecution and the extent of that co-operation.**
>
> ix. **The cost of returning the accused and/or witnesses to the Province for purposes of prosecution."**

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[193] This is a misnomer. The Director of Public Prosecutions in England has no jurisdiction in Scotland and Northern Ireland.

[194] Evidently a reference to the maxim *de minimis non curat lex* and usually written *"de minimis"*.

I should observe that the mental capacity of an accused is, in the case of indictable offences, for the judges of the Supreme Court of Newfoundland to determine, again with the assistance of either an especially impanelled jury or the jury of trial in cases where a jury is provided, and that in my respectful view the wishes of a complainant should not be a factor where other considerations require prosecution. Mr. Flynn very fairly says in respect of the above enumeration:

> **"It is a cost benefit analysis in essence which is undertaken here with any or all of these factors being weighed to determine whether it would be in the public interest to proceed. It is generally a very difficult matter with which one has to deal and on where, in essence, the Crown would be required to carefully weigh the public interest factors, the opinion of the victim, the opinion of the police and any other relevant factors. It is our view that except for the issue of cost raised in ix. above, cost of prosecution should not be a factor to be considered as a public interest factor."**

My concern with this subject is based upon my belief that prevention of recurrence of the events of Mount Cashel, and many more besides, largely depends on a resolute prosecution of offenders where there is a *prima facie* case and no absence of jurisdiction or other legal impediment. In short, if the Crown shares the opinion of the police that there are reasonable grounds for believing that an offence has been committed, and there is a *possibility* of conviction, it should not flinch because the odds are against success. The exercise of prosecutorial discretion should be rarely resorted to and only in the confines of a recognized compulsion to enforce the enacted law, bringing those who offend to justice.

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The Mount Cashel Investigation

The relevance of the forgoing observations may be justified by what actually occurred. Although the director of child welfare was in possession of complaints of child abuse before December 1975, or should have been, there was in that month a police investigation of complaints involving at least twenty-five of his wards resident at Mount Cashel. Detective Robert Hillier, the recipient of admissions by two Christian Brothers had ample, let alone reasonable and probable grounds to make an arrest, and was ordered not to. The deputy attorney general, Vincent P. McCarthy, Q.C., acting as director of public prosecutions during the period between the resignation of John Connors and the appointment of John Kelly, received police reports which justified the laying of charges, even in their edited form, and here the possibility that Chief John Lawlor had shut his eyes to the insufficiency of the editing must not be overlooked. In any event, no charges were laid, which meant, according to the doctrine then prevailing, that the police were bound to accept the decision of the department under which they operated; nor were the investigating officers Hillier and Pitcher told as to the reason why. The director of child welfare, whose first step was to seek the assistance of the superintendent of Mount Cashel, was also deprived of information by the deputy attorney general and, without the names of the alleged victims, could explain, if not justify his failure to come to the aid of his wards.

A number of recommendations must be made out of reviewing these events in the light of their examination in detail earlier in this report. The first has been foreshadowed and must be as follows:

Recommendation 17:

> **No institution, place or person should be allowed special status in exercising foster-care of any ward of the Director of Child Welfare and all should be equally accountable to the said director, submitting the required reports and maintaining the same standards of care.**

The director of child welfare, Frank J. Simms, insisted on special treatment for the Christian Brothers as "foster-parents", and reports emanating from Mount Cashel went direct to him over the heads of district and regional offices of the department of social services. Consultation with Superintendent Kenny or Brother Nash was probably the inevitable result of this policy and the general feeling that the Roman Catholic Church was "on a pedestal", but it is unnecessary to say that a police investigation would be fatally compromised by the nature of the complaint being prematurely revealed to a suspect with absolute control over the complainant. As it was, the superintendent was in a position to threaten the young complainants, as was alleged, on their way to the police station as well as being given the unprecedented advantage of being the source of their transportation.

Recommendation 18:

> **Complaints of child abuse must be independently investigated by the police or social workers and not disclosed *in limine* to those responsible for the care of the child complainants.**

Frank J. Simms quite properly sought inspection of the police reports of the Mount Cashel investigation. He made the application in a routine manner through Mrs. Mary Noonan in the department of justice, who was legal adviser to his department generally. She was denied access by Vincent P. McCarthy, and later Mrs. Sheila Devine, assistant director, was in effect denied information as to the names of the boys involved in the complaint, not by Mr. McCarthy but by Brother Gabriel McHugh, then Provincial Superior of the Christian Brothers. Either way any assistance to the alleged victims was precluded, and no attempt was made to pursue the matter on a ministerial level. It is probable that it would be treated differently at present, but it is nevertheless recommended:

Recommendation 19:

> **All allegations of child abuse, physical, sexual or emotional, contained in any police report or arising from any police investigation should be communicated to the Director of Child Welfare and all police officers concerned so advised.**

The police investigation at Mount Cashel in December 1975 was ordered stopped although incomplete, and in spite of there being reasonable and probable grounds to believe that offences against children had been committed. Again the climate today is clearer, but at the time no reasons were given to the investigating officers and no explanation given to the complainants, other than in the case of Carol Earle, that the cause of complaint had been taken care of. It is therefore recommended:

Recommendation 20:

> **Since every police officer has a duty to enforce the law and a responsibility to make sure that every allegation of criminal conduct is fully investigated and all relevant facts are contained in his or her report; and where charges have been laid in accordance with the responsibility of investigating police officers to do so if they are satisfied that there are reasonable grounds to believe an offence has been committed; if because of legal issues or impediments arising from the investigation a Crown attorney decides a prosecution should not proceed, the investigating officer should be promptly notified of that decision and the reasons for it, and in turn, he or she should ensure that all complainants are advised.**

* * *

Reasonable (and Probable) Grounds

The terms "reasonable and probable grounds" and "reasonable grounds" have been variously used in the text of this report to reflect a change in the text of section 504 of the *Criminal Code of Canada* created by the *Revised Statutes of*

Canada, 1985 Act, S.C. 1987 c.48 and the proclamation of the coming into force of the *Revised Statutes of Canada, 1985* on December 12, 1988 by which that section of the Criminal Code was in effect amended by the removal of the words "and probable". Accordingly the expression "reasonable and probable grounds" is used here in relation to all transactions before December 12, 1988 and the expression "reasonable grounds" for all subsequent thereto and for the present and future. The circumstances of the change and a comment thereon by me may be found at appendix L in Volume Two of this report.

The Director of Public Prosecutions

The conclusions reached and the recommendations made by the judicial inquiry into the case of Donald Marshall Junior in Nova Scotia brought the position of the director of public prosecutions into the legislative limelight. The result has been new legislation in the form of *An Act to Provide for an Independent Director of Public Prosecutions* of the General Assembly of Nova Scotia, 39 Elizabeth II, 1990, assented to by the Lieutenant Governor on June 19, 1990 as chapter 21 of the Acts of 1990. The act is reproduced hereunder:

> **"Be it enacted by the Governor and Assembly as follows:**
>
> **1 This Act may be cited as the *Public Prosecutions Act*.**
>
> **2 The purpose of this Act is to ensure fair and equal treatment in the prosecution of offences by**

(a) establishing the position of Director of Public Prosecutions;

(b) providing for a public prosecution service; and

(c) providing for the independence of the Director of Public Prosecutions and the public prosecution service.

3 In this Act, "prosecution" includes the decision whether to prosecute or not, the prosecution proceeding itself and matters arising therefrom, and appeals.

4 There shall be a Director of Public Prosecutions who

(a) is the head of the public prosecution service and is responsible for all prosecutions within the jurisdiction of the Attorney General conducted on behalf of the Crown;

(b) may conduct all prosecutions independently of the Attorney General except that the Director of Public Prosecutions shall comply with all instructions or guidelines issued by the Attorney General in writing and published pursuant to this Act;

(c) is, for the purpose of the Criminal Code (Canada) and the Summary Proceedings Act, the Attorney General's lawful deputy in respect of prosecutions;

(d) shall advise police officers in respect of prosecutions generally or in respect of a particular investigation that may lead to a prosecution when the police request such assistance;

(e) may issue general instructions or guidelines to a chief crown attorney, a regional crown attorney or a crown attorney in respect of all prosecutions or a class of prosecutions, and shall cause such instructions or guidelines to be published;

(f) may issue instructions or guidelines to a chief crown attorney, a regional crown attorney or a crown attorney in a particular prosecution.

5 (1) The Director of Public Prosecutions

(a) shall be a barrister of at least ten years standing at the Bar of Nova Scotia or of another province of Canada, and if of another province, shall, within one year of appointment, become a practising member of the Bar of Nova Scotia;

(b) shall be appointed by the Governor in Council after consultation with the Chief Justice of Nova Scotia, the Chief Justice of the Trial Division of the Supreme Court and the Executive of the Nova Scotia Barristers' Society;

(c) holds office during good behaviour;

(d) has the status of a deputy head of the provisions of the Civil Service Act and regulations relating to a deputy or a deputy head apply to the Director of Public Prosecutions; and

(e) shall be paid the same salary as the Chief Judge of the provincial court.

(2) The Director of Public Prosecutions may be removed from office for cause by a resolution of the Assembly.

(3) Where, while the Assembly is not sitting, the Director of Public Prosecutions fails to be of good behaviour, or is unable to perform the duties of office, the Governor in Council may appoint a person to be Acting Director of Public Prosecutions until fifteen sitting days after the Assembly is next sitting or until the Governor in Council sooner rescinds the appointment of the Acting Director of Public Prosecutions.

6 The Attorney General is the minister responsible for the prosecution service and is accountable to the Assembly for all prosecutions to which this Act applies and

(a) after consultation with the Director of Public Prosecutions, may issue general instructions or guidelines in respect of all prosecutions, or a class of prosecutions, to the prosecution service and shall cause all such instructions or guidelines to be in writing and to be published at the direction of the Director of Public Prosecutions as soon as practicable in the Royal Gazette;

(b) after consultation with the Director of Public Prosecutions, may issue instructions or guidelines in a particular prosecution, and shall cause such instructions or guidelines to be in writing and to be published at the direction of the Director of Public Prosecutions as soon as practicable in the Royal Gazette except where, in the opinion of the Director of Public Prosecutions, publication would not be in the best interests of the administration of justice, in which case the Director of Public Prosecutions, instead, shall publish as much information concerning the instructions or guidelines as the Director of Public Prosecutions considers appropriate in the next annual report of the Director of Public Prosecutions to the Assembly;

(c) may consult with the Director of Public Prosecutions and may provide advice to the Director of Public Prosecutions and, subject to clauses (a) and (b), the Director of Public Prosecutions is not bound by such advice;

(d) may consult with members of the Executive Council regarding general prosecution policy but not regarding a particular prosecution;

(e) may exercise statutory functions with respect to prosecutions, including consenting to a prosecution, preferring an indictment or authorizing a stay of proceedings, after consultation with the Director of Public Prosecutions.

7 The Director of Public Prosecutions may, from time to time, designate a barrister in the public service to be Deputy Director of Public Prosecutions who is responsible to the Director of Public Prosecutions and who may exercise all of the powers and authority of the Director of Public Prosecutions and, for that purpose, is a lawful deputy of the Attorney General.

8 There shall be crown attorneys to conduct prosecutions and the crown attorneys are responsible to the Director of Public Prosecutions and, where applicable, to a chief crown attorney or a regional crown attorney.

9 There may be a regional crown attorney to supervise crown attorneys within a geographic area determined by the Director of Public Prosecutions, and a regional crown attorney is responsible to the Director of Public Prosecutions.

10 There may be a chief crown attorney to supervise crown attorneys and, where applicable, regional crown attorneys, and a chief crown attorney is responsible to the Director of Public Prosecutions.

11 A chief crown attorney, a regional crown attorney and a crown attorney have all the powers, authorities and duties provided by the criminal law of Canada for prosecutors, for prosecuting officers or for counsel acting on behalf of the Attorney General.

12 All chief crown attorneys, all regional crown attorneys and all full-time crown attorneys shall be barristers appointed pursuant to the Civil Service Act upon the recommendation of the Director of Public Prosecutions after a completion.

13 The Director of Public Prosecutions shall report annually to the Assembly in respect of prosecutions.

14 (1) The Director of Public Prosecutions may appoint a barrister to take charge of and conduct a particular prosecution or to take charge of and conduct criminal business to the extent specified in the terms of the appointment.

(2) A barrister appointed pursuant to this Section shall be known and designated as a crown attorney and, when acting within the terms of the appointment, has all the powers and authority of a crown attorney.

> **(3) The Director of Public Prosecutions may, from time to time, vary the terms of appointment of a crown attorney pursuant to this Section or may, at any time, revoke the appointment.**
>
> **15 Notwithstanding Section 12, all prosecuting officers and assistant prosecuting officers employed by the Province immediately before the coming into force of this Act are crown attorneys for the purpose of this Act.**
>
> **16 Clause (c) of subsection (1) of Section 30 of Chapter 210 of the Revised Statutes, 1989, the House of Assembly Act, is amended by striking out the punctuation and words, "prosecuting officer" in the second and third lines thereof.**
>
> **17 Chapter 362 of the Revised Statutes, 1989, the Prosecuting Officers Act, is repealed.**
>
> **18 This Act comes into force on and not before such day as the Governor in Council orders and declares by proclamation."**

The effect of this legislation is to put a director of public prosecutions on a higher plane than a deputy minister who, though not a member of the regular public service in the civil service sense, is the deputy head of a government department, but appointed only during pleasure, whereas the new dispensation in Nova Scotia provides for the director of public prosecutions not only independence of the deputy minister but tenure during good behaviour, only terminable by a vote of the General Assembly which for practical purposes would be a vote of the members supporting the executive on any given occasion. To this extent the provision in the Canadian

Constitution in respect of judges appointed during good behaviour and requiring a two-thirds vote of both houses of Parliament, offers better protection.

To what extent is the Nova Scotian example to be followed in Newfoundland? Counsel for the government of Newfoundland and Labrador, Mr. George Horan, agreed in his argument to the commission given on June 27, 1990 that the director of public prosecutions in this province should continue to enjoy the independence that he has now without being the recipient of any special treatment by statute, except that his removal from office must be accompanied by a public statement as to its cause. Presumably this would be a statement in the House of Assembly and in my view should be notified to the public in the Newfoundland Gazette. Although the director does in fact, as I am advised, have direct access to the minister of justice and attorney general who in turn is responsible for the operations of his department to the House of Assembly, it seems that there should be statutory recognition of the fact that he has, and that he is not, in so far as his control of the prosecutorial function is concerned, accountable to the deputy minister or any associate deputy minister. Since I think it probable that professional public servants have security of tenure at least as good, if not better than deputy ministers and associate deputy ministers, he would not require the expressed status of a federally appointed judge nor would this be appropriate in my view. But in addition to recognition of his direct access to the minister, and the provision that his dismissal or removal to another position requires an explanation in the House of Assembly, the director of public prosecutions should be accorded a ministerial statement in that House whenever the minister should decline to act in accordance with his advice in any prosecution. These provisions should be incorporated in an appropriate statute either as an amendment to the existing law or standing by itself.

Recommendation 21:

> **A Director of Public Prosecutions should be appointed in accordance with normal public service recruitment procedures administered by the Public Service Commission but it should be provided either by a special act or by an amendment to existing statute law that in respect of the business of criminal prosecutions he or she have direct access to the Minister of Justice and Attorney General as chief adviser in that behalf; that upon the dismissal or removal of the said director to another post, the minister should give an explanation of the reasons therefore forthwith to the House of Assembly and a similar statement should be made in the House of Assembly explaining the circumstances of, and the reasons for a refusal of the minister to act upon the advice of the director in the case of any prosecution of alleged offenders in Newfoundland and Labrador.**

* * *

The Case for a Solicitor General

One of the circumstances present in 1975 and still present today is the control of the Royal Newfoundland Constabulary by the Department of Justice even though as pointed out by Mr. Horan in his argument, an assistant deputy attorney general has separate responsibilities in connection with them.

If it may never be known whether in the case of the Mount Cashel investigation at that time chief of police John Lawlor took the lead by suggesting the solution to deputy minister Vincent McCarthy, or that the latter issued instructions to Lawlor, the close collaboration that must have occurred could not have happened if Constabulary affairs had not not been in the hands of McCarthy's department. There is ample precedent for a separation between a department responsible for prosecutorial services and one responsible for police. I have already cited that of the Home Secretary in England; and closer to home the Solicitor General of Canada, not the Minister of Justice, is responsible to Parliament for the R.C.M. Police. Such is the case in Ontario where the provincial solicitor general is similarly responsible to the Legislative Assembly for the Ontario Provincial Police and for all police functions in the province. There are solicitors general in five other provinces and in Newfoundland the *Solicitor General's Act* was first enacted as S.N. 1953, No.53 appearing in the revision of 1970 as chapter 356:

> **"1. This Act may be cited as The Solicitor General Act.**
>
> **2. The Lieutenant-Governor in Council may appoint by commission under the Great Seal an officer who shall be called the Solicitor General of Newfoundland who shall assist the Minister of Justice in the work of the Department of Justice and shall be charged with such other duties as the Lieutenant-Governor in Council may assign to him."**

There is therefore almost an empty page on which might be inscribed new and useful provisions. In Canada the federal solicitor general no longer assists the attorney general in his duties, as is still the case in England where they are both described as the "Law Officers of the Crown", and are members of Parliament but not members of the cabinet. The important point is that the recognized independence of the police in laying charges without the supervision of the Crown attorneys, however valuable their advice may be when sought, calls for the same ministerial separation as exists in those parts of Canada where solicitors general play individual parts in various governments. Under the umbrella of the Solicitor General of Newfoundland, whose constating statute has lain inoperative for so many years, there should be a small department of government to administer police affairs, complaints against the Constabulary, and adult and perhaps juvenile corrections. In my deferential view, if in December 1975 there had been dealings between deputy ministers of separate departments, instead of between a chief of police subordinate to a deputy minister in one, there would have been, whatever sectarian loyalties might have dictated otherwise, much less liklihood of the suppression and concealment which rendered the police investigation of Mount Cashel abortive.

I therefore recommend:

Recommendation 22:

> **The post of Solicitor General of Newfoundland already established by law should be filled by a minister of the Crown henceforth, and a Department of the Solicitor General created by either amendment to the *Solicitor General's Act*, R.S.N. 1970, c.356 or by a separate statute for the management of all police affairs now under the control of the Minister of Justice and Attorney General as well as his or her responsibility for corrections and those of the Minister of Social Services.**

Chapter X: Recommendations to the Commission

Participants and Others

Before addressing the last requirement of the terms of reference in which the commissioner is "to bring forward conclusions and any recommendations which you consider desirable to further the administration of justice", I must refer to the large number of recommendations made at public hearings of the commission by those persons and associations with standing, as listed in the Introduction to this report and often referred to as participants. In addition to these, submissions were made orally and in writing by those who did not have standing, and could not be described as participants with the attendant right of examining and cross-examining witnesses.

Because of the volume of recommendations as a whole a complete list, identified under the headings of the agency or group tendering them at the public hearings in mid-June 1990 with the names of those who presented them or made the submissions in which they were contained may be found in Volume Two of the report at appendix K. I shall not attempt to express an opinion on each of these many recommendations but some general comment is required.

The recommendations of the Provincial Advisory Council on the Status of Women seem to be unexceptionable except for the apparently rooted belief, not peculiar to this body, that judges should be subjected to special education on the subject of sexual assault, and the equally rooted determination to compel this commission to embrace the cause of adult victims when its proper mandate is child abuse. As to programmes for judges I am troubled at the lack of appreciation of their position. Any extraordinary expertise acquired by special training in techniques developed in connection with any offence would provide good grounds for not allowing the case to proceed before a judge possessed of it. Stating the position in another way a judge is by law bound to consider in any one case only the evidence that is adduced before him or her, and, where a jury is involved, to instruct them accordingly. Thus, if the opinions of an expert are required one may be called as a witness if duly qualified; nevertheless a judge must tell the jury that the opinions of an expert are not binding upon them and that such evidence may be rejected, particularly if there is expert evidence to the contrary. In short, the education of judges on the subject of any alleged offence takes place in court, and although inevitably they may recall other cases involving the same offence, or have read books or articles about other cases, they must not either show or apply their knowledge where it has not been established in the case before them. That is why judges ask so many questions, some of which appear to require an explanation of the obvious, but the answers to which are needed for the record.

The recommendations of the Working Group on Child Sexual Abuse seemed to me with respect to be wholly beneficial if affordable, and bring back into focus the question of child abuse from which it is again wrenched by those of the Interagency Committee on Violence Against Women. Recommendation number 8 of those submitted by the Interagency Committee should not be allowed to pass without comment:

> **"That the Department of Justice ensure that in every part of the justice system crimes against persons should be given priority over crimes against property."**

It is difficult to understand how crimes against property can be other than crimes against persons, since the property affected is owned by persons or agencies to which persons contribute funds by way of donation or taxes. As to number 14, which reads:

> **"That the Department of Justice take measures to ensure there aren't any unnecessary delays in the judicial process, especially in cases of violent crime committed by someone known to the victim."**

I can only offer my sincere assent and will have more to say on the subject in the next chapter.

Gwen Mercer, a participant from the beginning and a constant and consistent supporter of the work of the commission attended on almost all the days of the public hearings and examined witnesses on a number of occasions. Ms. Mercer presented her views in evidence to the commission on June 5, 1990[195] but filed some ninety closely typewritten pages of recommendations to the number of 140 and comments thereon and furnished the commission with a number of publications of which those entered in evidence were exhibits C-0515 and C-0516. Because of the length of her submissions and the allocation of available paper it was necessary to reproduce her recommendations at appendix K without the comments attached to them. These recommendations are heavily coloured by her own experience as might be expected, but this has not diminished their value in several areas; on the subject of the necessity of the police providing information to complainants her views were generally endorsed by senior officers of the police forces involved.

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[195] Exhibit C-0514.

Among the recommendations made by persons and bodies who did not have standing were those from two practising lawyers, the first being John W. McGrath who gave evidence on two occasions, once as a member of the department of justice staff in relation to events referred to in article I of the terms of reference, and then again in making a submission which he illustrated from the witness-stand. The other was Wayne Dymond who at the last minute was unable to appear being engaged in a trial, but who filed recommendations to be found in appendix K. The recommendations made by Mr. McGrath and Mr. Dymond are highly relevant to the commission's terms of reference, and must be considered, in principle at least, for any treatment of the mandate to make recommendations furthering the administration of justice. It will be recalled that I have already indicated the importance of looking to private practitioners to supplement departmental resources for dealing with prosecutions generally, but I agree that a *caveat* must be entered to the effect that agents of the attorney general in this field must be competent.

A comprehensive survey of the responsibilities of government departments in matters at least tangential to my terms of reference, if not always confined to child abuse, was given by the Canadian Mental Health Association in the course of nineteen recommendations. Numbers 4 and 9, providing respectively for treatment of adolescents convicted of sex offences and treatment for convicted offenders in custody and upon their release, require expenditure of public funds now stretched to the uttermost for child protection. Much of what is recommended here in the field of training is worthy of support although the section entitled, "Accountability" seems to contemplate a large scale witch-hunt along lines not generally contemplated by the Constitution.

The recommendations of the Newfoundland Association of Social Workers[196] and those of the Memorial University School of Social Work[197] have much in common no doubt because of having been drafted by the same hand. Numbers 7 to 10 of the association's recommendations appear to be unexceptionable as does the principle inherent in number 18. Number 22 directs attention to what appears to me to be the indefensible practice of leaving positions unfilled as a means of saving money. It is not clear what is meant by "accountable" in number 27. The minister of social services and indeed the whole cabinet is accountable in matters of policy to the House of Assembly. The use of the word "client" may be entrenched in the lexicon of social work, but, if it is to be applied by public service social workers to other than the government of the province representing the people whose taxes pay them, it is misleading. Clients are those to whom a practitioner owes a duty because he or she has been retained and paid by them. "Subject" or even "patient" as recipients of professional services would be more appropriate, if less euphemistic. Number 39 is an example in my respectful view of what must be a suggestion to legislate against prejudice arising from a difference of opinion, and must fail. As Lord Holt said three hundred years ago "the mind of man is not triable". Number 69 is an example of the regrettable tendency to keep changing the names of functions of government to make them sound nicer. Number 79 is admirable, and seems to reflect concern that is now recognized by all government agencies involved. Number 81 surely cannot be a serious comment, expulsion from the province not having been so considered since the early nineteenth century and now being plainly unlawful as a penalty.

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[196] Exhibit C-0545.

[197] Exhibit C-0545A.

I have already pointed out that there is much repetition of the recommendations put forward by the Newfoundland Association of Social Workers in the recommendations filed on behalf of the non-participant School of Social Work at Memorial University. Perhaps under this head it would be acceptable to make a brief comment upon the first recommendation which seeks to effect on behalf of social workers the type of professional recognition afforded to nurses. It would appear from recent announcements in the press that this has been agreed to by the minister of social services, which, if true, would preclude any comment by me other than to agree that, as a stimulus to morale in a sorely tried activity whose practitioners are especially subject to what is graphically described as "burn-out", it would be beneficial if not allowed to array members of the public service in a sort of professional phalanx against the people of the province as represented by the Government of Newfoundland and Labrador. Recommendation 13 can surely only be valid if the school can provide the professionally trained social workers.

No particular comment is called for in the case of the Women's Legal Education and Action Fund, and Children in Care Alumni Incorporated, except to notice the markedly rhetorical language used in expressing the recommendations of these bodies. The Canadian Civil Liberties Association seems to promote, in the interests of public confidence in the Newfoundland justice system, a powerful agency at once expensive and irresponsible although, in my respectful view, rightly insisting on the need for addressing the problem of complaints about the administration of justice made by members of the public. The noncommittal but wise observations of the Brother T.I. Murphy Centre must be carefully borne in mind.

It will be observed that many of the recommendations made and filed at these public hearings have an *ad hominem* quality, some are irrelevant and very few seem to be concerned with the plight of the taxpayers of Newfoundland and Labrador; but all of them are expressive of views sincerely held and of the highest value to the commission in identifying problems and suggesting solutions. In so far as they are relevant to the furtherance of the administration of justice their tenor will be further discussed in the following chapter of this report.

* * *

The Panels

As a means of obtaining information, somewhere between evidence given on oath and submissions in writing, a number of panels were constituted, one of which in connection with the response of the administration of justice I have referred to in chapter IX, consisting of the Director of Public Prosecutions, Mr. Colin Flynn, and Superintendents Power and Kaiser. The distinguished and highly qualified men and women who were thus able to contribute their knowledge and experience to the deliberations of the commission, and for the edification of the public, were not of course witnesses in the ordinary sense, and were not sworn. I regret that a complete set of transcripts of what they had to say cannot, because of the constriction of time and space inevitably associated with any report of manageable proportions, be provided but I shall endeavour in the course of making further recommendations to comment on the opinions expressed by some of their members. For the present and for the record I list them below with their themes, composition and the dates of their appearance before the commission:

June 20, 1990	Investigation and Prosecution of Complaints[198]
	Colin J. Flynn, Director of Public Prosecutions, St. John's
	Superintendent Leonard P. Power, Royal Newfoundland Constabulary
	Superintendent Emerson H. Kaiser, Royal Canadian Mounted Police
June 20 & 21, 1990	Identifying the Complainant and Complaint[199]
	Dr. John C. Yuille, Ph.D University of British Columbia

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[198] Exhibits C-0559 to C-0560.

[199] Exhibits C-0561 to C-0569.

	Corporal Lillian Ulsh, M.A. Fredericton Police Department, New Brunswick
	Mary Wells, B.A., B.S.W., Institute for the Prevention of Child Abuse, Toronto
June 21, 1990	Recruitment and Training[200]
	Professor Rollie Thompson, Dalhousie University Law School, Nova Scotia
	Gilbert Pike, Chairman, Public Service Commission, St. John's
	Frederick Lynch, Atlantic Police Academy, Holland College, Prince Edward Island
	Professor Dennis Kimberley, Ph.D, School of Social Work, Memorial University of Newfoundland
June 22, 1990	State Response (No. 1)[201]
	Melba Rabinowitz, DayBreak Parent Child Centre, St. John's

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[200] Exhibits C-0571 to C-0581.

[201] Exhibits C-0582 to C-0596.

Recommendations to the Commission

	Mary Rebecca Clarke, Chairman, Shalom Group Home, St. John's
	George Norbert Lee, President, Foster Parents Association of Newfoundland and Labrador
June 25, 1990	Judicial Response[202]
	Wanda Lundrigan, Chief Adult Probation Officer for Newfoundland
	James Joseph Smyth, Barrister and Solicitor, St. John's
	Nicholas Avis, Barrister and Solicitor, Corner Brook
	William A. Collins, Q.C., Barrister and Solicitor, St. John's, Member of Canadian Human Rights Commission
June 25, 1990	Social Services Response[203]
	Austin R. Cooper, M.D., Physician Dr. Charles A. Janeway Child Health Centre, St. John's

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[202] Exhibits C-0597 to C-0603.

[203] Exhibits C-0604 to C-0606.

	Lynn E. Spracklin, Q.C., Barrister and Solicitor, Department of Justice, Newfoundland
	Marilyn McCormack, B.S.W., M.S.W., Child Protection Services Unit, Department of Social Services, St. John's
	Sergeant Elizabeth Constance Snow, Criminal Investigation Division, Royal Newfoundland Constabulary
June 26, 1990	State Response (No. 2)[304]
	Richard J. Morris, St. John's Adolescent Health Counselling Service
	Jocelyn D. Greene, B.S.W., Waterford Hospital and Emmanual House, St. John's
	Susan McConnell, Dr. Thomas Anderson Centre, St. John's

The commission was further assisted by the solo appearances of Rix G. Rogers, Special Adviser to the Minister of National Health and Welfare on Child Sexual Abuse in Canada and Superintendent Emerson H. Kaiser, R.C.M. Police who made his third appearance before the commission. Mr. Rogers, who had completed a Canada-wide study of the incidence of child sexual abuse discussed his report to the minister, *Reaching For Solutions*[205] and Superintendent Kaiser gave an instructive review of the R.C.M. Police training in this field, and furnished the commission with extensive material on the force's training procedures as a whole.[206] Mr. Rogers appeared on June 22 and Superintendent Kaiser on June 26, 1990.

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[304] Exhibits C-0607 to C-0609.

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[205] Exhibits C-0558 and C-0558A. Canadian Government Publishing Centre, 1990.

[206] Exhibits C-0610 to C-0619.

Chapter XI: Furthering the Administration of Justice

The National Crisis

If anything were required to establish the fact that the administration of justice embraced functions of government wider than the constitutional responsibilities of the Minister of Justice and Attorney General of Newfoundland, it was exposure to the views of the panellists and experts listed in Chapter X. An exact application of the terms of reference would appear to preclude further reflections upon the social services aspect of "furthering the administration of justice" but I conclude that no useful solutions can be found without recognition of the vital importance of the interdisciplinary approach to both training and operations. The seminal study entitled *The Report of the Committee on Sexual Offences Against Children and Youth*[207] - otherwise known as the Badgley Report - was commissioned by two members of the Government of Canada, the Minister of Justice and Attorney General and the Minister of National Health and Welfare in February 1981; it reported to them in 1984. As a result important amendments were made to the Criminal Code and the *Canada Evidence Act* to facilitate prosecution of such offences and the protection of complainants and witnesses who were children; this was for long, and still to this day, incongruously known as Bill C-15, as I have elsewhere observed and not surprisingly since it was not provided with a short title upon enactment but must be referred to as *An Act to Amend the Criminal Code and the Canada Evidence Act*,

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[207] Exhibit C-0507. Canadian Government Publishing Centre, 1984.

S.C. 1987, c.24. The next step was the appointment of Mr. Rix G. Rogers as Special Adviser to the Minister of National Health and Welfare on Child Sexual Abuse, as noted in the previous chapter, to report, as he says in his foreword to *Reaching for Solutions*[208], "on the long-range direction of federal initiatives regarding child sexual abuse, their implementation and coordination." After two and a half years of "intensive consultations from coast to coast" in which he interviewed one thousand six hundred people, and incidentally spent considerable time in Newfoundland and Labrador, he produced *Reaching for Solutions* in June 1990, so that his discussion of it and explanation of the problem before this commission on June 22 of that year was the first of its kind since this valuable document had been delivered into the hands of the Honourable Perrin Beatty, the current minister in Ottawa.

My immediate and overwhelming impression was one of a national crisis not by any means confined to one or two provinces, a crisis involving some two million families across Canada in which child sexual abuse has occurred and is occurring during the span of Mr. Rogers investigation, in and outside the family where one in every two boys and one in every three girls have been to a varying extent demoralized by an abuser. As an additional horror we have begun to realize that across the country there is a welling-up of complaints which only partly indicates the dimension or the duration of child sexual abuse hitherto hidden away and unrevealed. All the resources of Canada and its provinces capable of being brought to bear on corruption so massive and so damaging to society must be mobilized, trained and deployed. Considerable progress has obviously been made but any reader of *Reaching for Solutions*, or auditor of what its author had to say to this commission, must be convinced that there is still a great deal to be done. Important questions must be asked. How good is the training? Here I suggest it will be necessary to look to military models of which the R.C.M. Police has an abundance of information, and to pull back from the trenches as it were those who have experience or are facing "burnout" to act as instructors. How good is the deployment or, as it is known among planners, the "delivery of services"? Experience shows that without an amelioration of the staggering caseloads that social workers have in this province performance declines rapidly, and that a social worker, or a Crown attorney for that matter, whose enthusiasm is stifled by burdensome caseloads, lack of supplementary training, or the prospect of promotion fails to perform satisfactorily where association with human unhappiness is the daily lot. It is not enough to send public servants in these fields away on courses as a brief reward for many years of service; the training must be administered in large doses to the newcomers in the field.

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[208] Exhibit C-0558.

Recommendation 23:

> **In the field of child abuse, sexual, physical and emotional, the training of social workers and police officers should be treated as basic and joint, and undertaken at the earliest possible time in their periods of service; it should consist of practical exercises in the techniques of interviewing complainants and preparation for trial; and it should**

be assisted or conducted by social workers and police officers with experience of delivering the services which are the subject of the training programme.

Training and the Public Service Commission

Among the significant steps already taken by the police forces and social services are recognition and implementation of joint interviews by police officers and social workers with children who complain of sexual abuse and recognition of the value of the video-taping of these interviews, not only for use in court as now permitted, but for encouraging pleas of guilt in proper cases. All the experts who testified, or otherwise advised the commission, agreed on the importance of combined training as well as combined operations, and urged the inclusion of as many other professionals as might be involved in the criminal law process relating to child abuse. I have written some cautionary words on the subject of indoctrinating judges except in the case of persuasion at trial, but lawyers appearing for the Crown, or for that matter for the defence, can justifiably be included in the training process as pupils or instructors. So far the commission has not been advised of any systematic attempts to include members of the bar engaged in private practice in their programmes, but to the extent that they can either contribute experience of the law and the courts, or be made more aware of the dimensions of the problem, their inclusion can hardly fail to further the cause of justice. It is clear that interdisciplinary training, calling upon experts from a number of occupations either as instructors or participants in training programmes, cannot be effectively organized and administered by individual departments of government, although the evidence of Mr.

Gilbert Pike, Chairman of the Public Service Commission of Newfoundland and formerly deputy minister of social services, establishes that the department was doing just that. The public service commission is responsible for training in fields other than social services; it has relinquished the responsibility for training social workers and left it to the department of social services to go its own way. I doubt if joint or interdisciplinary training can be effectively organized and administered by any particular department of government, and since the public service commission is ideally placed - I do not express any view as to whether it is adequately staffed or funded - to coordinate this type of training of police officers, social workers and the like, with the cooperation and perhaps participation of department of justice solicitors and the practising bar, it is therefore recommended

Recommendation 24:

> **That the organization of interdisciplinary training programmes designed to meet the needs of child protection services be entrusted to the Public Service Commission and the said commission be staffed and funded for the purpose.**

* * *

Complaints by the Public against the Police

Witnesses before the commission on several occasions expressed the need for a process by which an independent body could review public complaints, particularly complaints against the police. The office of Ombudsman - or Parliamentary Commissioner as officially described - was not constituted to deal with complaints, but in practice fulfilled public need in that quarter. It is now abolished and there have been ministerial statements indicating that the matter of providing for public complaints against the police was under advisement. The position of this commission is that such a provision should be made, although with some reservations about a guarantee of independence of all political control. There is no principle of democracy, as expressed in our parliamentary system, to justify complete removal from government of responsibility for the supervision of a body to which government is itself responsible as from time to time elected by the people of the province. Over the years there has been a tendency for parliaments and legislatures to shed responsibility for various matters by creating boards and commissions to discharge duties previously undertaken by parliamentary committees. This has culminated in a state of mind which suggests that anything political is somehow reprehensible, even though politics must, upon reflection, be recognized as a guarantee of freedom, sought and fought for over many generations.

It would be open to a solicitor general to create a police commission with a public complaints bureau as an emanation or as a separate body. It may be too late to suggest that an all-party committee of the House of Assembly could discharge the same function for less money and be in closer touch with complainants. If a police commission is decided upon it should, in my respectful view, consist of no more than three commissioners one of whom might be a provincial court judge, seconded for the position of chairman, and should be empowered to hear appeals from a decision of the chief of police in matters of discipline within the Constabulary, to make recommendations to government as to pay and allowances of this force and, if is deemed preferable to other solutions, to entertain and dispose of complaints about the police from members of the public. This solution would limit the responsibilities of the solicitor general with respect to such a commission to reporting in the House of Assembly upon its transactions and making provisions for its continued existence. After consideration of the various alternatives, and bearing in mind the situation of the R.C.M.P. Public Complaints Commission at Ottawa, it is recommended:

Recommendation 25:

> **That a Royal Newfoundland Constabulary Complaints Commission be established, reporting to the Solicitor General of Newfoundland and included for administrative purposes within his or her Department, consisting of not more than three commissioners, one of whom should be a Judge of the Provincial Court seconded for the purpose to act as chairman and chief executive officer.**

* * *

The Rogers report *Reaching For Solutions*[209], is of critical importance in the fight against child abuse. Its recommendations under the chapter entitled "Child Sexual Abuse and the Justice System" run from numbers 23 to 53 and require public support. The report as a whole also deserves an index and I am astonished that a publication of this importance, and the fruit of much expenditure in other directions, could not have been supplied with one. It is not my function to review these recommendations which are addressed to a federal minister, but there is one which is echoed by recommendations made by participants and others to this commission which is number 33 on page 66:

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[209] Exhibits C-0558 and C-0558A.

> **"That provincial/territorial Attorneys General develop policies to give priority in court scheduling to child sexual abuse cases."**

As to this Mr. Rogers comments "implementation of such a policy will require consultation with the Bar Associations and Judicial Councils."

Justice Delayed

Special priority or not, Mr. Rogers and those who agree with him on this point have pointed tentatively to one of the great scandals of the second half of the twentieth century - delay in the courts. The swift administration of justice is the very foundation of the free society of which we are accustomed to be so proud. Number one in the Statutes of the Realm is Magna Carta - "the Great Charter" - given by King John almost at sword point to his principal subjects in A.D. 1215, article 40 (or 29th chapter) of which says "*nulli vendemus nulli negabimus aut differemus aut rectum et justitiam*: to no one will we sell, deny or delay either right or justice". It may be observed delay alone raises costs that only the prosperous can pay, and denial of justice and right follows as a matter of course. Scholars have pointed out that these momentous words had special meaning in the days of King John which do not respond to exact analysis today, but great charters and constitutions speak to descending generations contemporaneously. Magna Carta was the basis of parliamentary resistance to Charles I, just as the right of every free man to bear arms guaranteed by the constitution of the United States, so innocent in the eighteenth century, has been a curse to latter-day law enforcement agencies in the Union. Criminal cases which once took scarcely a week to try now often take months. Offenders who were brought to trial thirty years ago within the month after their apprehension are now often at liberty under judicial interim release until the public has forgotten why they are being tried at all. What has happened?

Complete answers to this question would fill volumes, but I venture to assert that the principal cause has been a change of attitude both on the bench and at the bar. Formerly adjournments or postponements, as they are generally called in this province, would rarely be asked for, and still more rarely granted; now application for them and their allowance is largely a matter of course. The prosecution of alleged offenders associated with this commission's investigation is a case in point. It may be said in explanation, if not in extenuation, that the *Charter of Rights and Freedoms*, legal aid, the growth of population, the refinements of expert evidence, greater sensitivity among judges and lawyers have played their part. They are nothing compared to the suffocating effect of postponement. If counsel agree to a postponement they are seldom questioned by judges though the reason for the application may be purely for the convenience of counsel. The interests of the accused and public are almost invariably subordinated to this. Recently the Supreme Court of Canada delivered a momentous judgement principally *per* Mr. Justice Cory in *Askov et al. v.*

The Queen[210] in which that learned judge, giving reasons in this respect concurred in by the other judges of the full court, said at page 691:

> **"The failure of the justice system to deal fairly, quickly and efficiently with criminal trials inevitably leads to the community's frustration with the judicial system and eventually to a feeling of contempt for court procedures. When a trial takes place without reasonable delay, with all witnesses available and memories fresh, it is far more certain that the guilty parties who committed the crimes will be convicted and punished and those that did not, will be acquitted and vindicated. It is no exaggeration to say that a fair and balanced criminal justice system simply cannot exist without the support of the community. Continued community support for our system will not endure in the face of lengthy and unreasonable delays."**

As previously observed the appellants' success had the disturbing result of charges being dismissed against a multitude of alleged offenders and the attorney general of Ontario, the province from which the case proceeded on appeal to Ottawa, said additional judges and Crown attorneys would be appointed to deal with delayed cases in the future. But in my respectful view, this is not and has never been the answer. What is needed is recognition that time in the courts is a precious commodity, that in the normal course postponements will not be asked for or granted and that the ominous words of Mr. Justice Cory in the last sentence of the passage quoted be taken to heart.

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[210] 75 O.R. (2d) 673.

I suggest with respect that Newfoundland is in an ideal position to lead the way back to a reasonable solution of procedural delays. Well supplied with judges and served by a highly professional and competent bar, much could be done voluntarily and in a spirit of goodwill. But rules of court will be required as they have always been required in procedural matters, however wise and well-observed the conventions of the courts may be. If caseloads are the bugbear of Crown and defence counsel alike, postponement is not the solution; and if that cannot be agreed upon then the Government of Newfoundland and Labrador can take up arms in a vital struggle and with the cooperation of the judges and the Law Society secure the enactment of rules of court severely limiting the number of postponements allowed to any party to a criminal trial, and one would hope a civil trial as well. On consent one should be enough, and for no more than ten days; thereafter almost none.

Recommendation 26:

> **That the Government of Newfoundland and Labrador through the Department of Justice, mindful of the inordinate delays in bringing both criminal and civil cases to trial in the courts, take such steps as may be possible to reduce the number of postponements or adjournments occurring therein by seeking the cooperation of judges and the Law Society of Newfoundland, and by enacting rules of court in aid thereof where necessary.**

It is recognized that counsel's first duty is to his client, subject as I venture to believe to his or her responsibility as an officer of the court. There are regrettably practitioners who have ignored, forgotten or never been aware of the latter obligation. Referring again to *Askov's* case the passage that I have already quoted from Mr. Justice Cory's judgment is immediately continued as follows:

> **"Further, implicit support for the concept that there is a societal aspect to s.11(b) can be derived from the observation that the last thing that some wish for is a speedy trial. There is no doubt that many accused earnestly hope that the memory of a witness will fail and that other witnesses will become unavailable. This factor was noted by T.G. Zuber in his *Report of the Ontario Courts Inquiry* (Toronto: Queen's Printer, 1987), at p. 73:**
>
>> **It is, however, the observation of this Inquiry that those accused of crime and their counsel are often disinterested in trial within a reasonable time. Delay is perceived not as a factor which will impair the ability of the accused to present a defence but rather a factor which will erode the case for the prosecution.**
>
> **Doherty J. wrote to the same effect in a paper delivered to the National Criminal Law Program in July 1989. He wrote:**
>
>> **Many accused do not want to be tried at all, and many embrace any opportunity to delay judgement day. This reluctance to go to trial is no doubt a very human reaction to judgment days of any sort; as well as a reflection of the fact that in many cases delay inures to the benefit of the accused. An accused is often not interested in exercising the right bestowed on him by s.11(b). His interest lies in having the right infringed by the prosecution so that he can**

> > escape a trial on the merits. This view may seem harsh but experience supports its validity.
> >
> > This unique attitude on the part of the accused toward his right often puts a court in a position where it perceives itself as being asked to dismiss a charge, not because the accused was denied something which he wanted, and which could have assisted him, but rather, because he got exactly what he wanted, or at least was happy to have -- delay. A dismissal of the charge, the only remedy available when s.11(b) is found to have been violated sticks in the judicial craw when everyone in the courtroom knows that the last thing the accused wanted was a speedy trial. It hardly enhances the reputation of the administration of justice when an accused escapes a trial on the merits, not because he was wronged in any real sense, but rather because he successfully played the waiting game.
>
> As these comments from distinguished jurists indicate, the s.11(b) right is one which can often be transformed from a protective shield to an offensive weapon in the hands of the accused."

In the case of deliberate dragging of the forensic feet it would seem that those responsible for the administration of justice should be quick to provide or seek penalties, at least in the form of costs ordered to be paid personally by counsel, or his or her instructing solicitors or both. Some suitable penalty should also be ordered when counsel on either side of the case neglects to give timely notice of an inability to appear, or an application for a postponement so that witnesses and victims or otherwise need not start unwarned upon the journey to the court-house, only to find it empty. Cynthia

Durdle's evidence in this regard was specific, but it is commonplace that witnesses, whether victims of an offence or not, are frequent victims of a lack of consideration by lawyers on both sides of a case putting them to inconvenience, not to mention a judge who acquiesces in a postponement of this type without rebuke or penalty. Especially is this the case in far-flung areas of the province where substantial journeys to court-houses must be undertaken. When the public gaze is directed to the administration of justice it is frequently from the eyes of witnesses summoned by the Crown or the defence, and in the former case, often the alleged victims of offences which have caused charges to be laid and prosecutions undertaken. As to these Mr. Justice Cory had this to say in *Askov's* case:

> **"It can never be forgotten that the victims may be devastated by criminal acts. They have a special interest and good reason to expect that criminal trials take place within a reasonable time. From a wider point of view, it is fair to say that all crime disturbs the community and that serious crime alarms the community. All members of the community are thus entitled to see that the justice system works fairly, efficiently and with reasonable dispatch. The very reasonable concern and alarm of the community which naturally arises from acts of crime cannot be assuaged until the trial has taken place. The trial not only resolves the guilt or innocence of the individual, but acts as a reassurance to the community that serious crimes are investigated and that those implicated are brought to trial and dealt with according to the law."**

Chapter XI

Support for Victims and Witnesses of Crime

The need for a coordinated victim-witness support system, the subject of considerable comment by the commission's panellists and by those who made submissions orally and in writing to the commission, was underlined by Mr. Powell as part of his written argument:

> "Evidence before the Commission from victims of abuse and submissions made by several interested groups stressed the need for some form of victim/witness support system within the justice system. The experience of your own staff within the Commission is proof that in dealing with victims of sexual abuse emotions are very much involved. Considerable time must be spent outside the courtroom properly preparing the witness and dealing with their emotional problems. At the present time this role is basically fulfilled by the police and Crown Attorneys. A simple matter like keeping victims and witnesses advised about the progress of the trial and any unexpected delays can be very important.
>
> In my submission this is an important matter which can be addressed without incurring any real cost. It is a matter of recognition of the importance of this role and delegating someone to ensure that the appropriate steps are taken. As previously noted officers in the Constabulary currently investigating abuse cases feel they are best equipped to set up such a program and this may be the case but, in my view, the matter could be properly addressed by designating a secretary within the Crown Attorney's office as the

> victim/witness support co-ordinator. This person is familiar with the police officers and could be aware of any volunteer or other government agencies available in that territorial area. I am sure many fill this role at the present time but sometimes the recognition can be important.
>
> In any event, it is my submission that the Department of Justice must recognize the importance of this service and assume the lead in establishing and co-ordinating support services to victims and witnesses in sexual abuse cases."

I adopt what counsel says in this respect, and make the following recommendation with the reservation therein contained:

Recommendation 27:

An officer of the Criminal Division of the Department of Justice should be appointed and relieved from time to time to coordinate the work of the police and of Crown attorneys assigned to cases in support of advisory services to alleged victims and others who are called to testify at trials, informing them of the scheduling of the cases in which they are interested and the procedure relating thereto, and paying as much attention to their comfort and convenience as is possible under the circumstances; provided that such services do not exceed what is necessary for the purpose and become sources of suggestion as to presenting their evidence or as to its content.

It is appreciated that progressive changes are taking place in all departments of the Government of Newfoundland and Labrador. In the case of the administration of justice the Royal Newfoundland Constabulary and the Department of Social Services are closely linked for the purpose of dealing with child abuse. Important changes are, I believe, contemplated and some are afoot. In the case of the Constabulary there was evidence to suggest that the force was not fully equipped to conduct videotaped interviews with alleged victims and abusers. As to the importance of the videotaped interview I need do no more than quote extracts from what was said by Corporal Lillian Ulsh and Dr. John C. Yuille in the course of their panel discussion on training and interviewing techniques. First from Corporal Ulsh:

> **"Q. You referred to the videotaped interview with the victim, alleged victim, what are your views in relation to that. I understand here, for instance, in the Constabulary it is a practice that is not being used, a procedure that is not being used.**
>
> **A. Right.**
>
> **Q. Do you think it should be and what are the pros and cons of it?**
>
> **A. It is absolutely a marvellous tool. I have been using videotape since 1983 and probably ninety-five percent of my interviews are done on videotape. There may be the odd occasion for different circumstances that it is not available, or whatever. But with training in our province and for instance the Crown prosecutors, the police and the child protection workers are receiving training together. They are learning**

methods like the step wise interview. They are learning statement validity analysis. And so you have that videotape and it is not that we are looking at using it under the new procedural and evidentiary changes of the criminal code, but because it has more far reaching benefits than that and, in my opinion, that is not why we started it or why we are still doing videotaping. But you are able to provide that tape to the Crown. Usually we are doing joint interviews so the child protection worker is there monitoring the interview anyway and sees it as well. So everyone is able to do things like statement validity analysis on the interview. The Crown then is provided with a clear picture. The court is provided with a clear picture if it ends up being utilized that way. The defense has a clear picture also of what the child has said and what the allegations are etc. The uses of the videotape just continue to go on and on and on.

Q. Have you any experiences as to whether or not it is affecting the outcome in court cases?

A. Oh absolutely. There is no comparison between those areas that are consistently videotaping their interviews and areas that are not, with guilty pleas.

Q. Would you expand on that a bit?

A. I would say that we enjoy, in our jurisdiction in Fredericton, we enjoy about a ninety-five percent success rate of our cases that are laid. And the majority of them would be guilty pleas. Very seldom do we go to trial and most often if

we are going to trial it is usually third person assaults and it is usually jury trials.

Q. Is that because when a defense lawyer sees the videotape of the interview and has a chance to assess the alleged victim that results in the guilty plea?

A. Absolutely. And that videotape is there. The Crown can use it for other ways too, for instance in sentencing."

Counsel then turned to Dr. Yuille.

"Q. Do you have any views in relation to that, Dr. Yuille? The videotapes.

A. Oh I agree one hundred percent that there is every reason to use them and Lillian has touched on many of them. Certainly of the people that I have talked to across the country report things like a doubling in the confession rates when they go to videotapes. Also I know that it can be helpful to non-offending parents for example and in that they have a chance to find out exactly what happened by watching the videotape instead of just getting a sort of piecemeal report about things. There are a whole variety of benefits from it and there is only one reason not to videotape and that is if the interview isn't well done. And if people are properly trained and given a chance to get some experience with videotaping and become comfortable with it then there is every reason to do it."

Corporal Ulsh later noted that in her province of New Brunswick some fifty-five to sixty percent of all complaints of child sexual abuse reached the courtroom and of these ninety to ninety-five percent resulted in convictions owing to the many pleas of guilty which the video-taped interviews of the complainants induce. There seems to be little doubt and certainly not in the minds of any witnesses we heard on the subject that, expensive as initial installation may be, video-taping interviews was "cost-effective". It is accordingly recommended

Recommendation 28:

> **That the Royal Newfoundland Constabulary be forthwith equipped with facilities for the videotaping of interviews for use in compliance with relevant sections of the *Criminal Code of Canada*.**

In the Department of Social Services the *Child Welfare Act, 1972* is as I am advised in the process of amendment and a new act will no doubt be brought forward in line with what was begun in 1984 by Ontario and Alberta and this year by the province of Nova Scotia, the new act having been fully commented on to the commission by Professor Rollie Thompson, a prime mover in its production and drafting. During the course of writing this report the minister, the Honourable John Efford, kindly provided me with a copy of a recent study by a leading firm of management consultants whose recommendations seemed to be wholly beneficial. These experts have commented on the importance of using computers for the monitoring of child welfare cases and the substitution of electronic for manual records. Evidence was given by Neil Hamilton and one of his successors as provincial co-ordinator of child care and protection services, testifying to the limited use and laborious compilation of the child abuse register, an essential tool in the fight against child abuse. Depriving the child welfare division of the department of the means of computerizing this and other records would appear to be false economy. I have already commented on the need to have a record of this type freely available to all engaged in the multi-disciplinary interagency team attack on a social evil of frightening proportions. I therefore recommend:

Recommendation 29:

> **That no effective expense be spared in equipping the Child Welfare Division of the Department of Social Services with the means of storing and retrieving records of child abuse currently kept and in contemplation, and that all departments and agencies of government engaged in the combined attack of child abuse in Newfoundland and Labrador have access to such information, and in particular what is referred to as the "child abuse register".**

* * *

Publicity Under the Summary Proceedings Act, S.N. 1979, c. 35

The *Summary Proceedings Act*, assented to December 14, 1979, provides in Part III for the holding of inquiries into the cause and circumstances of fires injuring or destroying property and in respect of deaths other than accidental, formerly provided for in sections 126 to 128 of the *Summary*

Jurisdiction Act, R.S.N. 1970, c. 364, as amended. No jury is empanelled as in the case of coroners inquests in other jurisdictions. It was under the provisions of this part that the deaths of Alonzo Corcoran and Trudi Butt were the subject of judicial inquiries ordered by the director of public prosecutions. At the time of the judicial inquiry presided over by Judge Barnable in the case of Alonzo Corcoran in 1984 and 1985 the section dealing with reporting to the attorney general by the judge read as follows:

> **"29.(1)The judge who holds an inquiry, shall after hearing the testimony adduced at the inquiry, send to the Attorney General a written report that includes**
>
> **(a) the conclusions of the judge as to the cause and origin of the fire or the cause of death, as the case may be;**
>
> **(b) all the evidence taken at the inquiry; and**
>
> **(c) any recommendations the judge may have as a result of the inquiry.**
>
> **(2) Notwithstanding any order under subsection (2) of section 26, the Attorney General may make available to any person, on payment of the prescribed fee, a copy of the report or any part of it."**

By the *Summary Proceedings (Amendment) Act*, S.N. 1987, c.7, that section was repealed and replaced by the following contained in section 3 thereof with unusual numbering:

> **"29.(1)At the conclusion of the inquiry the presiding judge shall make a written report to the Attorney General which shall contain findings as to the following:**

> **(a) the identity of the deceased;**
>
> **(b) the date, time and place of death or the fire;**
>
> **(c) the circumstances under which the death or fire occurred;**
>
> **(d) the cause of death or the fire; and**
>
> **(e) the manner of death.**
>
> **(1.1) A report under subsection (1) may contain recommendations as to the prevention of similar deaths or fires.**
>
> **(1.2) The findings of the judge shall not contain any findings of legal responsibility or any conclusion of law.**
>
> **(1.3) The report of the presiding judge shall be made not later than six months from the date of commencement of the inquiry unless an extension of the time is granted by the Chief Provincial Court judge."**

Undisturbed was section 26:

> **"26.(1)An inquiry shall be held in public.**
>
> **(2) At any stage in the inquiry, the judge may, on application by a party, or otherwise, make an order directing that the evidence taken at the inquiry, or any portion of it, shall not be published or broadcast except by leave of the judge granted at a time subsequent to the inquiry."**

There were left the provisions of section 26(2) and section 29(2) whereby the attorney general could ignore an order of the court on payment of a prescribed fee.

The implications of section 26 are that in the normal course the evidence is available to the public, but not the report to the attorney general who "may" make it available even though it were to contain quotations of evidence given at the inquiry which the judge has ordered not to be published. It will be recalled that at page 320 the assistant director of public prosecutions, Robert Hyslop, was quoted in a confidential letter to deputy minister of social services Gilbert Pike which enclosed the report of Judge Barnable in the Corcoran inquiry as follows:

> **"Our Minister has not made a decision to release the report publicly. In all likelihood, since the report deals with an aspect of public safety, I would anticipate that it will be released in due coure."** ***(sic)***

This confirms the discretionary power of the minister of justice and attorney general to offer or withhold a judicial report of an inquiry open to the public, about a matter of public concern, possibly containing recommendations as to what steps should be taken to prevent a recurrence of the event investigated. Under the circumstances one would think that all such reports should be made public in due course and I so recommend:

Recommendation 30:

The *Summary Proceedings Act*, S.N. 1979, c.35 as amended should be further amended by repealing subsection (2) of section 26 and amending subsection (1) thereof so that the same shall read "an inquiry

shall be held in public except when the presiding judge shall order that part of it be held *in camera* on grounds that would be lawful in any criminal proceeding in court"; and that subsection (2) of section 29 should be amended to provide for the tabling of all such reports by the Attorney General in the House of Assembly.

The Public Enquiries Act, R.S.N. 1970, c.314

This act has not been amended since the statutes of Newfoundland were revised as of 1970, the revision taking effect in 1973 and needs the scrutiny of the law officers. If one examines section 2 references to "the Lieutenant-Governor in Council" and to "this Province" indicate a post-Confederation origin although the phrase "the peace, order and good government of this Province" is language associated with federal power under the Canadian Constitution and would not, it is suggested, be appropriate in provincial legislation at this time. Section 3 presents a number of anomalies and should be set out in full:

> **"3.(1) The Commissioner or Commissioners shall have the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in any court of law in civil cases; and any wilfully false statement made by any such witness on oath or solemn affirmation shall be a misdemeanor punishable in the same manner as wilful and corrupt perjury."**
>
> **(2) No witness shall be excused from answering any question upon the ground that the answer to such question may tend to criminate him, or may tend to**

> **establish his liability to a civil proceeding at the instance of the Crown or of any person.**
>
> **(3) If with respect to any question a witness objects to answer on the ground that his answer may tend to criminate him or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any person, and if but for this Act or the Canada Evidence Act the witness would therefore have been excused from answering the question and although the witness is by reason of this Act or the *Canada Evidence Act* compelled to answer the answer so given shall not be used or receivable in evidence against him in any criminal trial, or other criminal proceeding against him thereafter taking place, other than a prosecution for perjury in the giving of such evidence."**

Subsection (1) conferring power on a commissioner to enforce the attendance of witnesses and "to compel them to give evidence as is vested in any court of law in civil cases" is now inconsistent with the provisions of the *Evidence (Public Investigations) Act*, R.S.N. 1970, c.117 by which a commissioner must apply to the Supreme Court of Newfoundland to punish a contemnor for his or her contempt of court. The word "misdemeanor" must be an indication of pre-Confederation origin since the Criminal Code has never recognized the classification of offences as felonies on the one hand or misdemeanours on the other. Subsection (2) and subsection (3) should now be examined for the purpose of finding out to what extent section 13 of the *Charter of Rights and Freedoms* has rendered their provisions unnecessary or in apparent conflict. In particular the concluding words of subsection (3) are a plain invasion of the federal power to enact the criminal law.

At the same time I do not suggest that a public inquiries act of any other province should be uncritically adopted. Since royal commissions are older than parliaments in the long history of British constitutional development, it is as well to recognize that their creation is still a function of the prerogative in England where they are appointed by royal warrant[211] and there is no reason why a royal commission could not be appointed by lieutenant governor's warrant as long as the appointing function does not become entrenched in a statute which deprives the executive of discretion as to the procedure employed. Since most, if not all of the provincial statutes as to public inquiries across Canada do not require the use of the great seal of the province there are positive, albeit imponderable advantages to retaining this aspect of section 2 as to appointment by "the Lieutenant-Governor in Council may by Commission under the Great Seal appoint such person or persons (hereinafter called the Commissioner or Commissioners) as he may select to hold such enquiry" thus preserving the ability to issue such commission in Her Majesty's name and justify, as it only can be justified, the use of the term "royal".

The government may also wish to consider some provision in a revised Public Enquiries Act to allow for an expeditious challenge to the jurisdiction of a commissioner such as is contained in the Ontario *Public Inquiries Act*, R.S.O. 1980, c.411 which reads as follows:

> **"6.(1) Where the authority to appoint a commission under this Act or the authority of a commission to do any act or thing proposed to be done or done by the commission in the course of its inquiry is called into**

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[211] See the report of the Royal Commission on Criminal Procedure, January 1981, Cmnd 8092.

> **question by a person affected, the commission may of its own motion or upon the request of such person state a case in writing to the Divisional Court setting forth the material facts and the grounds upon which the authority to appoint the commission or the authority of the commission to do the act or thing are questioned.**
>
> **(2) If the commission refuses to state a case under subsection (1), the person requesting it may apply to the Divisional Court for an order directing the commission to state such a case.**
>
> **(3) Where a case is stated under this section, the Divisional Court shall hear and determine in a summary manner the question raised.**
>
> **(4) Pending the decision of the Divisional Court on a case stated under this section, no further proceedings shall be taken by the commission with respect to the subject-matter of the stated case but it may continue its inquiry into matters not in issue in the stated case. 1971, c.49, s.6."**

The reference to the Divisional Court is of course inappropriate in the case of Newfoundland, and in any event access to the Supreme Court of the province can be secured under the common law although perhaps less expeditiously. Presumably the language of subsection (1) of section 6 of the Ontario statute is an attempt to spell out what is involved in a challenge to jurisdiction and it is recommended that if such provision is made in a revised Public Enquiries Act for Newfoundland and Labrador that it be made clear that judicial review of the type contemplated be confined to questions of jurisdiction alone. It is therefore recommended:

Recommendation 31:

That the *Public Enquiries Act,* R.S.N. 1970, c.314 be reviewed with a view to enacting such amendments as may

(a) in the case of section 3 thereof remove such material as is inconsistent with the constitutional position of Newfoundland as a province of Canada and with due regard to the provisions of section 13 of the *Charter of Rights and Freedoms*; and

(b) provide for the stating of a case by a commissioner or commissioners to the Trial Division of the Supreme Court of Newfoundland with effect similar to that of section 6 of the *Public Inquiries Act* of Ontario, R.S.O. 1980, c.411 and confined to questions of jurisdictions only.

Recommendation 32:

The substance of section 2 of the said *Public Enquiries Act,* R.S.N. 1970, c.314 be retained, and in particular those provisions of the said section which provide for a commission of inquiry being issued under the Great Seal of the Province and in Her Majesty's name.

The Compensation Issue

I have already mentioned that my terms of reference contain no explicit direction as to this commission's mandate on the question of compensating those who make claims against the government as victims of sexual abuse at the hands of persons at Mount Cashel entrusted with their care by the Director of Child Welfare and I was careful not to consider any evidence relevant to the issue. However, Mr. John Harris, acting as counsel for some, if not all, of the alleged sufferers made an eloquent plea in his final argument for recommendations on it. He said in part:

> **"I will therefore ask you to make a recommendation concerning the approach that government might take in terms of rectifying that wrong and my submission is that you recommend to government that there be established a separate body; whether it be a commission or tribunal or whatever, to assess the aspect of compensation for the victims because it is a special case that has given rise to this inquiry."**

After prolonged reflection I am of the opinion that the question becomes relevant under the general authorization to make recommendations for the "furtherance of the administration of justice" and that to ignore it on the grounds that it was once explicitly provided for and subsequently abandoned would not be in the public interest.

Further inducement to make an extended comment and a recommendation on the subject of compensation has been provided by the Minister of Justice who made a public statement suggesting that the principle of compensation might be favourably considered by the government, subject to some qualifications as to a determination of liability by the courts which appeared to postpone any out-of-court assessment of damages to a time perceivably far in the future. If the mechanism of settlement by arbitration is decided upon the process should be prompt and contrast favourably with proceeding by way of civil litigation. The arbitration should be consensual and based upon the assumption without admission that the government is liable to the complainants as victims of sexual abuse while wards of the director of child welfare during a designated period, and confined to those who have already made complaints to the police or this commission or both.

It is suggested that submission to arbitration should be voluntary, and that no attempt should be made to make arbitration conditional upon all the claimants submitting to it, but those who do must provide the government with a release of all claims relating to their complaints in consideration of receiving the compensation awarded by arbitration. All claimants submitting to arbitration should be on an equal footing including those whose claims would otherwise be statute-barred. Those who reject arbitration and choose to pursue their causes in the courts should not, it is suggested, be given the latter consideration by a government however benevolent which has the interest of taxpayers in mind.

If the government decides to allocate a "global" sum within the confines of which the arbitrator would assess the compensation payable to each claimant, with consequential abatement if the sum set aside proves less than the sum of the individual amounts as at first calculated, such a limitation on assessment would emphasize the *ex gratia* nature of the resulting payments as contrasted with compensation based upon a confession of liability or a finding of such by a court. It is also desirable as being in keeping with normal constitutional practice in estimating expenditures and informing the public through the House of Assembly of their place in the public accounts. The course of arbitration should be expeditious, particularly if the arbitrator selected is generally familiar with the evidence before this commission and the nature of the police investigation. To require an arbitrator to begin afresh, viewing all the evidence accumulated over the last eighteen months with an inexperienced staff, would be to ensure substantial delay.

The following recommendations are offered:

Recommendation 33:

That the Government of Newfoundland and Labrador invite all claimants against it for compensation on the grounds of having suffered sexual abuse at the hands of persons entrusted with their care at Mount Cashel Boys' Home and Training School as wards of the Director of Child Welfare pursuant to the provisions of the *Child Welfare Act, 1972* with respect to all complaints made in good faith during a designated period to consensual arbitration, on the assumption, but without an admission, that it is liable to the said claimants.

Recommendation 34:

That the Government of Newfoundland and Labrador set aside a sum of money within which the arbitrator may assess the amounts payable by it to each of the claimants referred to in recommendation 33 submitting to arbitration.

Recommendation 35:

That the provisions of the *Limitation of Actions (Personal) and Guarantees Act*, R.S.N. 1970, c.206 as amended be inoperative as against those claimants who submit to arbitration without prejudice to the position of the Government of Newfoundland and Labrador in defending an action in court.

Chapter XII: Concluding Reflections

The Incessant Glare

This report has been written in close conformity with the terms of reference issued to me in Her Majesty's name by your Honour in Council on June 1, 1989 and in accordance with the evidence adduced at public hearings of the commission which itself was presented within the same framework. Some of that evidence, as already observed, was of such a nature as to shock profoundly the conscience and susceptibilities of the people of Newfoundland and Labrador and was widely disseminated by telecast within and beyond the boundaries of the province. There can be little doubt that its dissemination was of public importance and accelerated a determination to advance the cause of child protection. There is also little doubt that the effect of televising the *viva voce* evidence dealing with child abuse caused painful and injurious identifications to be made and raised the possibility of prejudicing the prospect of a fair trial for those charged with offences under circumstances relevant to the commission's inquiry. These difficulties were encountered at a relatively early stage in its proceedings and dealt with by commission counsel with the co-operation of all parties having standing. Steps were taken, laborious and sometimes confusing, to edit exhibits by deleting names of people and locations and to order questioning of witnesses accordingly.

I have referred in the Introduction to the economic advantages of the videotaped record supplied by the telecaster for which no charge was made to the commission, and to the importance of keeping the public fully and fairly informed by telecasting the whole proceedings of the commission, unedited except for what I considered necessary to be confined to *in camera* hearings. On the other hand there now looms over the legal horizon the portent of the Supreme Court of Canada's decision in *Starr et al. v. Houlden et al.*, [1990] 1 S.C.R. 1366 which ruled as unconstitutional a provincial commission of inquiry behaving as would a police investigation of alleged criminal activity on the part of the appellants. The Honourable Mr. Justice (now Chief Justice) Lamer, who gave the judgement of the majority of the court, said this at page 1389 of the report:

> **"I am of the view that the province of Ontario has exceeded its jurisdiction by the manner in which it has framed this public inquiry. Although it may not have intended this result, the province has created an inquiry that in substance serves as a substitute police investigation and preliminary inquiry with compellable accused in respect of a specific criminal offence under s. 121 of the *Criminal Code*. This inquiry is, therefore, *ultra vires* the province as it is in pith and substance a matter related to criminal law and criminal procedure under the exclusive jurisdiction of Parliament pursuant to s.91(27) of the *Constitution Act, 1867*."**

An interesting excursus on this was made by a member of the concurring majority, the Honourable Mr. Justice Sopinka in an address to the Canadian Institute for the Administration of Justice in Winnipeg on August 24, 1990, providing the added piquancy of the speaker having been counsel to the central characters in two celebrated inquiries conducted by Mr. Justice Grange of the Ontario Court of Appeal and Chief Justice Parker of the Ontario High Court, being respectively Nurse Susan Nelles and the Honourable Sinclair Stevens. In opening his analysis of the impact of *Starr's* case the learned judge said this:

> **"The Starr decision is not the death-knell for public inquiries in Canada, but it will have some profound effects on the conduct of further public inquiries. Some inquiries will be left unscathed by the decision; others may be stopped dead in their tracks."**

Although it is presumably too late to affect any part of the transactions of this commission in the course of its public hearings, it is useful to speculate as to what might have been the case had *Starr's* case been so resolved before they began.

Mr. Justice Sopinka classifies public inquiries in sprightly language:

> **"Public inquiries actually come in two separate breeds. The distinction between the two may be apparent from the ambit of the terms of reference, but such clarity is rare. One breed, the truly public inquiry, is both valuable and permissable. These inquiries are established to look into general matters of public import. The commissions generally hold hearings, weigh policy considerations, and make recommendations for the course of future legislative action. Canada has a long and successful history of inquires of this nature. The MacDonald Commission into the economy which ultimately proposed the implementation of a free-trade agreement with the United States is but one notable example. As fact finding and policy developing instruments these policy commissions are a valuable complement to the other branches of public government in this country. Of course, it has been observed that inquiries of this ilk are routinely held, and their recommendations almost as routinely ignored by the legislatures, but**

> **nevertheless, these public inquiries still serve a valuable, and legitimate role in the collection of instruments of public governance available in a parliamentary democracy.**
>
> **There is however, another, quite distinct breed of inquiries. They are not true public inquiries. They are criminal investigations masquerading as public inquiries. Some, of which the Starr is but one example, are in effect surrogates for the regular criminal process. Many of these inquiries are unacceptable because insufficient attention is paid to the interest of the target individual."**

The casual inquirer might find the lineaments of both breeds on the face of the inquiry concluded by this report. The first part of it dealing with the Mount Cashel investigation of 1975, and the complaints which were then suppressed, took place almost side by side with the revived police investigation which began before the commission was appointed and continued after the public hearings had ended, resulting in a considerable number of charges which at the time of writing have not yet been brought to trial. Later stages of the inquiry dealing with various aspects of employment of government forces in the struggle against child abuse would fall one may hope into the learned judge's first category, the true public inquiry. To what extent does the Mount Cashel episode fall into his second, "criminal investigations masquerading as public inquiries"?

First of all it may be said that this commission's investigation under article I of the terms of reference was directed to a police investigation cut short in December 1975 under circumstances which I was asked to explore. Answering the questions in article I required findings of fact upon which criminal prosecutions might have been undertaken; perhaps the most sensitive of all was the question: "whether any person or persons impeded or obstructed any police officer in the investigation of these matters". It will be recalled that at page 209 this question was answered with some circumspection. Of the "compellable accused" - to use Mr. Justice Lamer's phrase in *Starr* - who might have been called before the commission the providential decision not to call any persons charged or chargeable made in November 1989 must be considered favourably by any informed critic of the commission's process. The only other potential offender still alive is the former chief of police John F. Lawlor, who in the end allowed much in Robert Hillier's original report of a "sexual nature" to go forward to the deputy minister in the form of the report of December 18, 1975. This was also the case for the report of March 3, 1976 but by that time the confessed offenders had left the province. The fact that the rules of evidence had been relaxed to permit questions to witnesses put by commission counsel to take the form of cross-examination is, in itself, a questionable basis for allowing criminal charges to be framed against one who has been compelled to testify at an inquiry, but, as I have said, no one was compelled to testify by this commission and none of the "targets" did, unless one makes the assumption that John F. Lawlor is among their number, not yet justifiable.

Mr. Justice Sopinka spoke even more vigorously about the effect of media reporting on the central figures of the two public inquiries which he represented as counsel, using the following expressive language.

> **"The glare of attention should not be underestimated. The coverage was probing, and it was incessant. The scrutiny is of a level that I have never experienced elsewhere. I am not completely certain why we as a**

> **society have this fixation for inquiries, but in general terms it appears that all the right elements are in place for a public spectacle. First, the issue is normally one of interest, and controversy. Second, the inquiry, which gives the impression of being a trial becomes the focus of considerable drama. Finally, once underway the proceedings begin to develop their own momentum so that any hint of salacious detail immediately becomes front page news."**

One other passage must be quoted being particularly apposite to the situation of this commission as being the latest example of a public inquiry using television not only as a means of informing the public but as constituting the record itself. Again let Mr. Justice Sopinka speak as he spoke in Winnipeg on August 24, 1990:

> **"Obviously, the presence of journalists, and the dissemination of information about the proceedings serves a valuable public interest. In fact, for policy inquiries the widespread interest and discussion that the inquiry sparks is a vital component of the overall success of the process. It is the rare commission who can resist these arguments of public interest as well as the lure of the T.V. lights. However, resist they must. The public interest can be served without television coverage of the proceedings. The interests of the individuals involved dictate that this be so."**

Many years ago, when I held the same views in what appeared to be a losing fight against the introduction of television cameras into courtrooms, there did not seem to be any need to struggle against their surveillance of the proceedings of public inquiries, and I conducted two, the *Royal Commission on Atlantic Acceptance* in 1965 - 1969 and the *Royal Commission on Waste Management Inc.* 1977 - 1978 prohibiting the use of cameras of any kind inside the rooms while hearings were being conducted. But then came the two inquiries in which Mr. John Sopinka, Q.C. (as he then was) was engaged. The first was the *Royal Commission of Inquiry into Certain Deaths at the Hospital For Sick Children and Related Matters* which produced in December 1984 the report of the Honourable Mr. Justice Grange, a provincial inquiry in Ontario. Next was the *Commission of Inquiry into Allegations of Conflict of Interest of the Honourable Sinclair M. Stevens* conducted by the Honourable Chief Justice W.D. Parker, a federal inquiry in 1987. Another federal commission - the *Commission of Inquiry into the Use of Drugs and Banned Practices Intended to Increase Athletic Performance* upon which the Chief Justice of Ontario, the Honourable Charles L. Dubin reported in 1990 - came hard on their heels. These three commissions made no difficulty about the intrusion of television and their proceedings were photographed and disseminated at length. Under the circumstances I yielded without a qualm to the suggestion that the proceedings of this commission should be televised, especially since it was accompanied by an offer of a free video and audio record at a very considerable saving to the public. Because the telecast was complete and continuous there was no editing or undue emphasis on any part of the evidence but as to its reception in other parts of Canada and perhaps the United States of America I am afraid that it may have deserved the strictures on Mr. Justice Sopinka's "jury of anchormen".

No one would readily impugn his own process and there is much to be said for keeping the public fully and fairly informed, but there is also the possibility that unfair and unfounded allegations may be made against persons affected by an inquiry however hard a commissioner or counsel may try to undo its harmful effects. For the future it may well be that the government of the province, in consultation with a commissioner before or after his appointment, should decide the question of the presence of television at public hearings by order in council instead of introducing some intractable provision into the *Public Enquiries Act*. I am advised that the Newfoundland branch of the Canadian Bar Association, making its annual submission to the Minister of Justice, has urged the amendment of that statute to protect the reputations of those called before a public inquiry. I have not been advised that its recommendations included the denial of television at its hearings.

Acknowledgements

As if to emphasize the singularity of royal commissions of prerogative origin, commissions of inquiry derived from statute, or a combination of both as would appear from the language of the one I have had the honour to conduct they tend to grow from small beginnings in proportion to the complexity of their tasks, unlike standing committees of the Legislature and other investigative bodies with a continuous existence. A body of dedicated workers, impatient of routine and filled with a sense of the unique importance of their task is urgently assembled and urgently operates until the time for dissolution comes. Such a time is bound to be attended with regret like the unheralded departure of an old friend from familiar haunts. While this feeling prevails I hasten on the eve of presenting my report to pay tribute to my associates of nearly two years without whose labours and assistance it would never have appeared.

To everyone whose name appears on the list of commission staff at the beginning of this volume I am deeply indebted. The work of commission counsel was beyond praise. In the Introduction I have already referred to the problem of combining investigation with the concurrent presentation of evidence and the continuous pressure to fill every moment with productive work. The comprehensive experience of criminal trials and investigations enjoyed by Mr. Powell and Mr. Day stood me in good stead. Their investigative labours owed much to the work of the commission's investigators Mr. Orser and Mr. Horne both of whom as former members of the R.C.M. Police contributed not only a wealth of experience but sleepless vigilance and energy to counsel's work.

Over the whole process of the commission's activities ranged the discerning eye of Mr. Vivian, the executive secretary, responsible directly to the commissioner for all aspects of its administration. Armed also with the experience of a career in the R.C.M. Police as well as with its sequel in the Department of Justice from which he was seconded to the commission, he not only performed the many tasks associated with this responsibility but acted as registrar in the public hearings of the commission for every one of the 150 days on which they occurred. To these preoccupations were added the taking of depositions from various witnesses and some investigations entrusted to him by counsel; finally upon his shoulders fell the task of seeing my report through the press. For all this indispensable assistance and devotion to the work of the commission I am grateful beyond measure.

My own responsibilities fell into two periods. In the first I presided over the public hearings of the commission in St. John's and in the course of receiving and considering the evidence of 220 witnesses who made 282 appearances and provided 794 actual exhibits I was sustained at every step by all those whose names appear on the list I have referred to. Among those Miss Sandra M. Burke of the Newfoundland Bar an associate of Mr. Day began her productive connection with the work of the commission in the performance of various tasks of legal research for counsel and myself, and ended by undertaking the presentation of certain aspects of the evidence, examining witnesses in court, particularly in relation to some of the child welfare and criminal investigation profiles, as assistant counsel and to the great advantage of the commission's work. Throughout the time spent by me in St. John's Miss Virginia Connors performed the double duties of secretary to the commissioner and to the executive secretary, to our entire satisfaction, with many excursions into liaison with government departments for which her experience qualified her. After my return to Toronto and the establishment there of the commission's offices devoted to the writing of this report Miss Patricia Devereaux, whose secretarial skills and knowledge of the sophisticated electronic equipment at the disposal of the commission throughout the day and night for preparation of the evidence ending in June 1990 managed the Toronto office, and produced the text of the report with the same skill and devotion displayed in her earlier work, while Miss Connors remained to assist Mr. Vivian at the office in St. John's. The third of the commission's invaluable secretaries Miss Margaret Linehan, like Mr. Vivian seconded from the department of justice, after also playing a full part assisting counsel and investigators during the period of the public hearings, returned to the department at the end of June 1990. A remarkable tribute was paid to Miss Devereaux and Miss

Linehan by Mr. Michael Harris in his recently published book, "*Unholy Orders*", for the sustaining friendliness given to witnesses during the ordeal of their sometimes painful testimony.

Clerical duties of a less specific nature, but involving work of great importance to the commission such as the copying of many thousands of pages of documents were admirably performed by Mrs. Bride Higgins until the end of 1989 and thereafter by Miss Colleen Power who continued with the commission until her talents were sought and secured by Mr. Justice O'Regan for the work of his commission investigating transactions of the Sprung companies. Miss Joanne Truscott and Miss Colleen Ryan worked exclusively at night on the many tasks requiring sometimes intensive preparation for the hearings of the morning. In addition they were engaged in preparing transcripts of evidence from the audio cassettes where required in the commission's proceedings. The day and night work of the staff made special demands on security but measures devised by Mr. John Clarke of the Department of Public Works, Services and Transportation and admirably applied by Commissionaires Follett and Taylor in all weathers were equal to the challenge.

The work of counsel, so prominent in the public eye when engaged in the commission's hearings, entered a new phase of no less importance to me after they were over. The writing of this report required constant checking of details, references to statutes and matters requiring professional opinion. The report will itself reflect the extent to which I am indebted to Mr. Day and Mr. Powell and particularly in the later stages to Mr. Powell whose presence in Toronto made consultation, never withheld, easier to arrange. Nevertheless Mr. Day supplied me with answers to the many questions I had raised during the hearings upon which he had undertaken to provide information and responded to many other requests. As many commissioners find, busy counsel returning to their practices after a period of close association seem to disappear from their lives. In this case our association has been close and continuous. Mr. Day has supplied me with numerous memoranda of evidence and expressions of opinion on a number of matters particularly in the field of child welfare. Mr. Powell, with his expert knowledge of criminal law and procedure and the interaction of the public and the police, has kept me similarly advised and has in addition performed the vital function of reading drafts of the report at every stage giving me the benefit of his seasoned advice. Mr. Vivian and Ms. Judy Power closely examined the text of the report throughout and have saved me from many inadvertencies. The provision of an index by Mrs. Heddy Peddle should and will be invaluable. At the same time all recommendations and expressions of opinion in the report are my own, even where they have happily coincided with those of my advisers, and are my responsibility.

Not the least of the amenities provided for me by the Government of Newfoundland and Labrador was the arrangement made between Mr. Vivian and Mr. Roland d'Abadie of the Ministry of the Attorney General in Ontario which provided me and Miss Devereaux with accommodation in the ministry's premises at 180 Dundas Street West, Toronto, free of charge to the province of Newfoundland. At this address the various commissions of inquiry undertaken on behalf of the Government of Ontario in recent years have conducted their proceedings, and a permanent section of the ministry created to house and assist them has assembled a library and support services the availability of which has been an example of inter-provincial co-operation of the greatest help.

Having made these specific acknowledgements I must not overlook the whole-hearted efforts of all departments of government who have been called upon for assistance by the commission, particularly former and currently serving officers of the Department of Justice and the Department of Social Services who have furnished information and in many cases voluntarily testified at least once, and in many cases more often, about departmental transactions for the past twenty years. Particular mention should be made of the officers of the Royal Newfoundland Constabulary and the Royal Canadian Mounted Police who not only contributed unstintingly to the testimony at the commission's hearings but co-operated wherever appropriate with commission counsel and investigators. My debt to all these members of the public service was enhanced by the opinions and information which they gave as members of the various panels who advised the commission in the closing stages of the public hearings, and by those of their colleagues of other provinces who joined them in giving the commission the benefit of their professional knowledge and experience.

To the many men and women in the province and across Canada who have responded to inquiries by counsel, and thus assisted me, I offer thanks and apologies for not specifically naming them with the excuse that to do so would not only overbalance this section of the report but would in some cases unnecessarily identify those who might prefer to remain anonymous. But there are two general expressions of obligation that I wish to make. From first to last I have enjoyed the friendly stance of those members of the government who have had particular responsibility for the administrative welfare of the commission, which the government as a whole advised your Honour to establish. As well I was conscious of the goodwill of the people of Newfoundland and Labrador and their support for the sometimes delicate task in which I was engaged. This was particularly evident in many chance encounters in public places on the Avalon peninsula during the time my wife and I spent in the province in 1989 and 1990, and was, as it were, an expression at large of the warmth of our reception by many friends of earlier days and those made during the period of this brief residence. To all those named and unnamed who eased a sometimes thorny path and left us with an indelible impression of their ancient traditions of hospitality and understanding I record our grateful thanks.

Consolidated Recommendations

Recommendation 1:

Policy manuals and directives should be drafted in precise language, avoiding the use of terms which do not give clear direction to field staff in departments doing work such as is undertaken by that of Social Services avoiding the use of expressions such as "etc", "serious", and "reasonable".

Recommendation 2:

That existing policy dealing with the destruction of files in the Department of Social Services be reviewed to ensure that the social history of children taken into care, child progress reports and child placement reports, be preserved indefinitely for investigative and historical purposes on a confidential basis in the custody of the Director of Child Welfare subject to such confidentiality and exemption from the application of the *Freedom of Information Act* as the minister may deem proper acting on the director's advice.

Recommendation 3:

Close observance of the provisions of the *Child Welfare Act, 1972* should be consistently maintained by the Child Welfare Division of the Department of Social Services and unauthorized practices and expedients not implemented until authorized by either amendments to the statute or by regulations made thereunder.

Recommendation 4:

The Director of Child Welfare and the police forces of the Province should forthwith begin to lay charges under section 49 of the *Child Welfare Act, 1972* in cases where they have reasonable grounds to believe that reports of child abuse, as required by the said section, have not been made.

Recommendation 5:

The provisions of section 11.1 (7) of the said statute to the effect that an order made under section 15 shall recite the facts so far as ascertained in an investigation under the latter section and that the presiding judge shall deliver a certified copy of the order to the said director should be observed by judges in courts over which the Province of Newfoundland has jurisdiction, and such judges should give their reasons in writing for making or declining to make the orders sought.

Recommendation 6:

If Recommendation 5 is adopted and section 11.1 (7) amended as suggested non-compliance therewith should not be considered acceptable and an order by way of *mandamus* should be sought in the Supreme Court of Newfoundland.

Recommendation 7:

The Director of Child Welfare should act as intended by the House of Assembly in enacting section 3 of the *Child*

Welfare Act, 1972 providing that he or she shall be appointed by the Lieutenant Governor in Council and empowered to administer and enforce the act "under the control and direction of the Minister" enjoying direct access to the minister and freedom from direction in matters of policy by the deputy minister with whom he or she should be equal in status in all matters over which the said director is given authority by the statute.

Recommendation 8:

The *Child Welfare Act, 1972* should be amended to validate arrangements for care of children between the Director of Child Welfare and parents, guardians or persons providing foster-care not at present expressly authorized therein.

Recommendation 9:

Section 47 of the *Child Welfare Act, 1972* should be amended to provide that in any such arrangement the said director must assume the status and duties of guardianship in respect of a child under his or her care and control.

Recommendation 10:

Caseloads of solicitors in the Department of Justice should be reduced by immediate recruitment to established positions not now filled, and the provision, if necessary of a special salary scale not conforming to any generally applicable scheme of public service pay as exemplified by provisions made for advisory counsel in the Department of Justice of Canada.

Recommendation 11:

Crown attorneys and all agents of the Attorney General of Newfoundland should ensure that plea negotiation involves only counsel for the Crown and counsel for the defence, that the facts, course and expected result of such negotiations should be disclosed to the judge presiding at any trial material to such negotiation in open court, and not discussed with him or her at any time in chambers or otherwise.

Recommendation 12:

Where expedition and the reduction of caseloads of Crown attorneys situate either at headquarters of the Department of Justice or anywhere else in the Province of Newfoundland are required the Director of Public Prosecutions should retain the services of members of the bar in private practice to act on behalf of the Attorney General.

Recommendation 13:

Members of the Royal Newfoundland Constabulary assigned to the Major Crime Section of the Criminal Investigation Division should receive training in all the procedures and techniques necessary to enable them to detect, investigate and testify in respect of the sexual offences defined in those sections of the *Criminal Code of Canada* introduced by an *Act to amend the Criminal Code* and the *Canada Evidence Act* S.C. 1987, c.24; R.S.C. 1985, c.19 (3rd Supp.) to standards the same as or equivalent to those observed by the Royal Canadian Mounted Police without delay.

Recommendation 14:

The Director of Public Prosecutions should forthwith make arrangements for the contents of police reports in any case of physical or sexual abuse of a child to be made available to the Director of Child Welfare, subject to such reservations that may properly be based upon the requirements of security to ensure effective prosecution of offenders.

Recommendation 15:

As a corollary to and in contemplation of the implementation of Recommendation 14 the Director of Child Welfare should make available to the police the contents of the register of child abuse cases now maintained in the Child Welfare Division for statistical purposes.

Recommendation 16:

A child abuse unit under such name as may be considered inoffensive and desirable be maintained in the Major Crime Section of the Criminal Investigation Division of the Royal Newfoundland Constabulary to investigate, report upon and charge in cases involving the sexual and physical abuse of children, being unmarried boys or girls under the age of sixteen years separate and apart from any subdivision of the said section dealing with sexual offences not so specified.

Recommendation 17:

No institution, place or person should be allowed special status in exercising foster-care of any ward of the Director of Child Welfare and all should be equally accountable to the said director, submitting the required reports and maintaining the same standards of care.

Recommendation 18:

Complaints of child abuse must be independently investigated by the police or social workers and not disclosed *in limine* to those responsible for the care of the child complainants.

Recommendation 19:

All allegations of child abuse, physical, sexual or emotional, contained in any police report or arising from any police investigation should be communicated to the Director of Child Welfare and all police officers concerned so advised.

Criminal Justice and Complaints

Recommendation 20:

Since every police officer has a duty to enforce the law and a responsibility to make sure that every allegation of criminal conduct is fully investigated and all relevant facts are contained in his or her report; and where charges have been laid in accordance with the responsibility of investigating police officers to do so if they are satisfied that there are reasonable grounds to believe an offence has been committed; if because of legal issues or impediments arising from the investigation a Crown attorney decides a prosecution should not proceed, the investigating officer should be promptly notified of that decision and the reasons for it, and in turn, he or she should ensure that all complainants are advised.

Recommendation 21:

A Director of Public Prosecutions should be appointed in accordance with normal public service recruitment procedures administered by the Public Service Commission but it should be provided either by a special act or by an amendment to existing statute law that in respect of the business of criminal prosecutions he or she have direct access to the Minister of Justice and Attorney General as chief adviser in that behalf; that upon the dismissal or removal of the said director to another post, the minister should give an explanation of the reasons therefore forthwith to the House of Assembly and a similar statement should be made in the House of Assembly explaining the circumstances of, and the reasons for a refusal of the minister to act upon the advice of the director in the case of any prosecution of alleged offenders in Newfoundland and Labrador.

Recommendation 22:

The post of Solicitor General of Newfoundland already established by law should be filled by a minister of the Crown henceforth, and a Department of the Solicitor General created by either amendment to the *Solicitor General's Act*, R.S.N. 1970, c.356 or by a separate statute for the management of all police affairs now under the control of the Minister of Justice and Attorney General as well as his or her responsibility for corrections and those of the Minister of Social Services.

Recommendation 23:

In the field of child abuse, sexual, physical and emotional, the training of social workers and police officers should be treated as basic and joint, and undertaken at the earliest possible time in their periods of service; it should consist of practical exercises in the techniques of interviewing complainants and preparation for trial; and it should be assisted or conducted by social workers and police officers with experience of delivering the services which are the subject of the training programme.

Recommendation 24:

That the organization of interdisciplinary training programmes designed to meet the needs of child protection services be entrusted to the Public Service Commission and the said commission be staffed and funded for the purpose.

Recommendation 25:

That a Royal Newfoundland Constabulary Complaints Commission be established, reporting to the Solicitor General of Newfoundland and included for administrative purposes within his or her Department, consisting of not more than three commissioners, one of whom should be a Judge of the Provincial Court seconded for the purpose to act as chairman and chief executive officer.

Recommendation 26:

That the Government of Newfoundland and Labrador through the Department of Justice, mindful of the inordinate delays in bringing both criminal and civil cases to trial in the courts, take such steps as may be possible to reduce the number of postponements or adjournments occurring therein by seeking the cooperation of judges and the Law Society of Newfoundland, and by enacting rules of court in aid thereof where necessary.

Recommendation 27:

An officer of the Criminal Division of the Department of Justice should be appointed and relieved from time to time to coordinate the work of the police and of Crown attorneys assigned to cases in support of advisory services to alleged victims and others who are called to testify at trials, informing them of the scheduling of the cases in which they are interested and the procedure relating thereto, and paying as much attention to their comfort and convenience as is possible under the circumstances; provided that such services do not exceed what is necessary for the purpose and become sources of suggestion as to presenting their evidence or as to its content.

Recommendation 28:

That the Royal Newfoundland Constabulary be forthwith equipped with facilities for the videotaping of interviews for use in compliance with relevant sections of the *Criminal Code of Canada*.

Recommendation 29:

That no effective expense be spared in equipping the Child Welfare Division of the Department of Social Services with the means of storing and retrieving records of child abuse currently kept and in contemplation, and that all departments and agencies of government engaged in the combined attack of child abuse in Newfoundland and Labrador have access to such information, and in particular what is referred to as the "child abuse register".

Recommendation 30:

The *Summary Proceedings Act*, S.N. 1979, c.35 as amended should be further amended by repealing subsection (2) of section 26 and amending subsection (1) thereof so that the same shall read "an inquiry shall be held in public except when the presiding judge shall order that part of it be held *in camera* on grounds that would be lawful in any criminal proceeding in court"; and that subsection (2) of section 29 should be amended to provide for the tabling of all such reports by the Attorney General in the House of Assembly.

Recommendation 31:

That the *Public Enquiries Act,* R.S.N. 1970, c.314 be reviewed with a view to enacting such amendments as may

(a) in the case of section 3 thereof remove such material as is inconsistent with the constitutional position of Newfoundland as a province of Canada and with due regard to the provisions of section 13 of the *Charter of Rights and Freedoms*; and

(b) provide for the stating of a case by a commissioner or commissioners to the Trial Division of the Supreme Court of Newfoundland with effect similar to that of section 6 of the *Public Inquiries Act* of Ontario, R.S.O. 1980, c.411 and confined to questions of jurisdictions only.

Recommendation 32:

The substance of section 2 of the said *Public Enquiries Act,* R.S.N. 1970, c.314 be retained, and in particular those provisions of the said section which provide for a commission of inquiry being issued under the Great Seal of the Province and in Her Majesty's name.

Recommendation 33:

That the Government of Newfoundland and Labrador invite all claimants against it for compensation on the grounds of having suffered sexual abuse at the hands of persons entrusted with their care at Mount Cashel Boys' Home and Training School as wards of the Director of Child Welfare pursuant to the provisions of the *Child Welfare Act, 1972* with respect to all complaints made in good faith during a designated period to consensual arbitration, on the assumption, but without an admission, that it is liable to the said claimants.

Recommendation 34:

That the Government of Newfoundland and Labrador set aside a sum of money within which the arbitrator may assess the amounts payable by it to each of the claimants referred to in recommendation 33 submitting to arbitration.

Recommendation 35:

That the provisions of the *Limitation of Actions (Personal) and Guarantees Act*, R.S.N. 1970, c.206 as amended be inoperative as against those claimants who submit to arbitration without prejudice to the position of the Government of Newfoundland and Labrador in defending an action in court.

ALL OF WHICH I RESPECTFULLY SUBMIT FOR YOUR HONOUR'S CONSIDERATION.

Commissioner

St. John's
May 31, 1991

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2

NEWFOUNDLAND AND
LABRADOR

The Royal Commission of Inquiry into the Response of the Newfoundland Criminal Justice System to Complaints

Report of the Commissioner
The Honourable
S.H.S. Hughes, Q.C.

Royal Commission of Inquiry into the Response of the Newfoundland Criminal Justice System to Complaints

Volume Two: Appendices

The Honourable
S.H.S. Hughes, Q.C.
Commissioner

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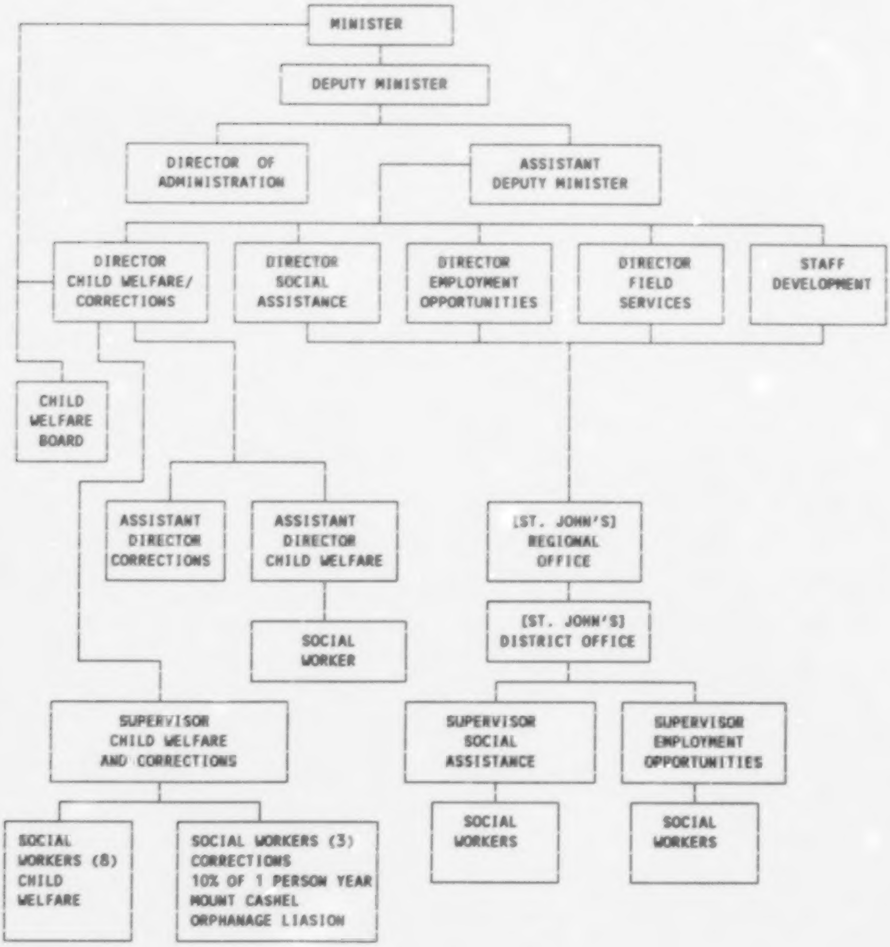
Appendix A

1975 Organization Charts

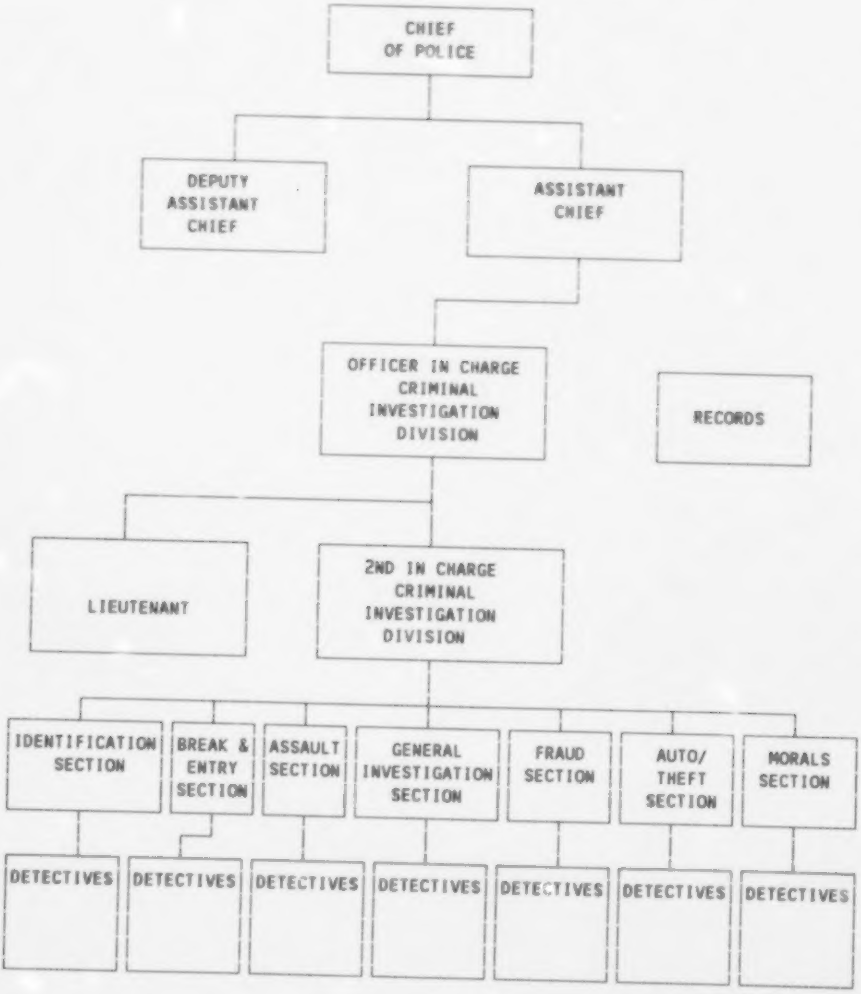
Appendix A, chart 1

ORGANIZATION
OF [1975]
DEPARTMENT OF SOCIAL SERVICES
(HEADQUARTERS AND ST. JOHN'S DISTRICT)


MINISTER
DEPUTY MINISTER
DIRECTOR OF ADMINISTRATION
ASSISTANT DEPUTY MINISTER
DIRECTOR CHILD WELFARE/ CORRECTIONS
DIRECTOR SOCIAL ASSISTANCE
DIRECTOR EMPLOYMENT OPPORTUNITIES
DIRECTOR FIELD SERVICES
STAFF DEVELOPMENT
CHILD WELFARE BOARD
ASSISTANT DIRECTOR CORRECTIONS
ASSISTANT DIRECTOR CHILD WELFARE
SOCIAL WORKER
[ST. JOHN'S] REGIONAL OFFICE
[ST. JOHN'S] DISTRICT OFFICE
SUPERVISOR CHILD WELFARE AND CORRECTIONS
SUPERVISOR SOCIAL ASSISTANCE
SUPERVISOR EMPLOYMENT OPPORTUNITIES
SOCIAL WORKERS (8) CHILD WELFARE
SOCIAL WORKERS (3) CORRECTIONS 10% OF 1 PERSON YEAR MOUNT CASHEL ORPHANAGE LIASION
SOCIAL WORKERS
SOCIAL WORKERS

Appendix A, chart 2

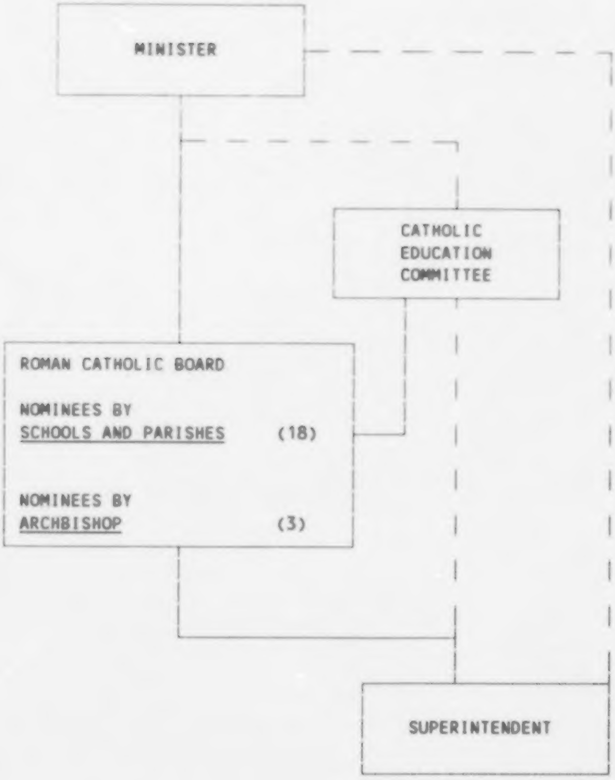
ORGANIZATION
OF
THE NEWFOUNDLAND CONSTABULARY
(CRIMINAL INVESTIGATION DIVISION) **[1975]**


CHIEF OF POLICE
DEPUTY ASSISTANT CHIEF
ASSISTANT CHIEF
OFFICER IN CHARGE CRIMINAL INVESTIGATION DIVISION
RECORDS
LIEUTENANT
2ND IN CHARGE CRIMINAL INVESTIGATION DIVISION
IDENTIFICATION SECTION
BREAK & ENTRY SECTION
ASSAULT SECTION
GENERAL INVESTIGATION SECTION
FRAUD SECTION
AUTO/ THEFT SECTION
MORALS SECTION
DETECTIVES
DETECTIVES
DETECTIVES
DETECTIVES
DETECTIVES
DETECTIVES
DETECTIVES

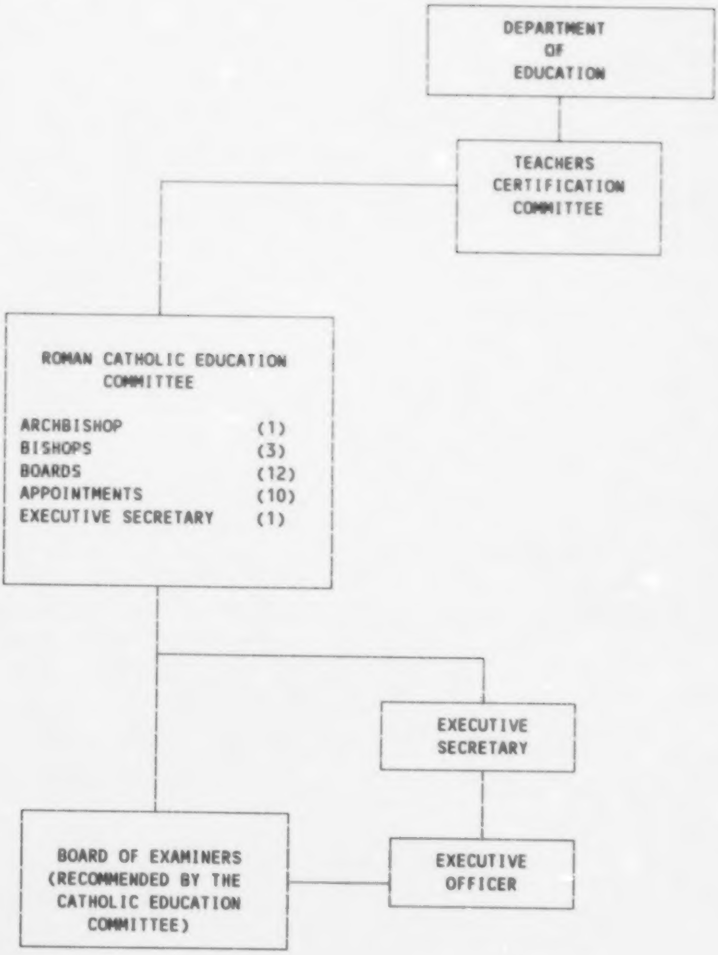
Appendix A, chart 3

ORGANIZATION
OF
ST. JOHN'S ROMAN CATHOLIC
SCHOOL BOARD

[1975]

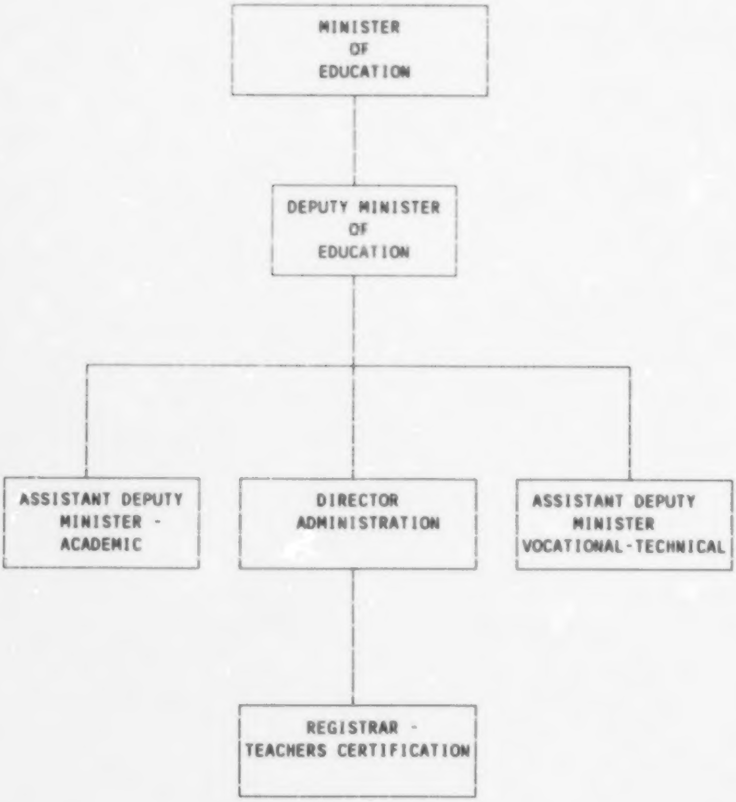

MINISTER
CATHOLIC
EDUCATION
COMMITTEE
ROMAN CATHOLIC BOARD
NOMINEES BY
SCHOOLS AND PARISHES (18)
NOMINEES BY
ARCHBISHOP (3)
SUPERINTENDENT

ORGANIZATION OF ROMAN CATHOLIC EDUCATION COMMITTEE (TEACHER'S CERTIFICATION) [1975]


DEPARTMENT OF EDUCATION
TEACHERS CERTIFICATION COMMITTEE
ROMAN CATHOLIC EDUCATION COMMITTEE
ARCHBISHOP (1)
BISHOPS (3)
BOARDS (12)
APPOINTMENTS (10)
EXECUTIVE SECRETARY (1)
EXECUTIVE SECRETARY
BOARD OF EXAMINERS (RECOMMENDED BY THE CATHOLIC EDUCATION COMMITTEE)
EXECUTIVE OFFICER

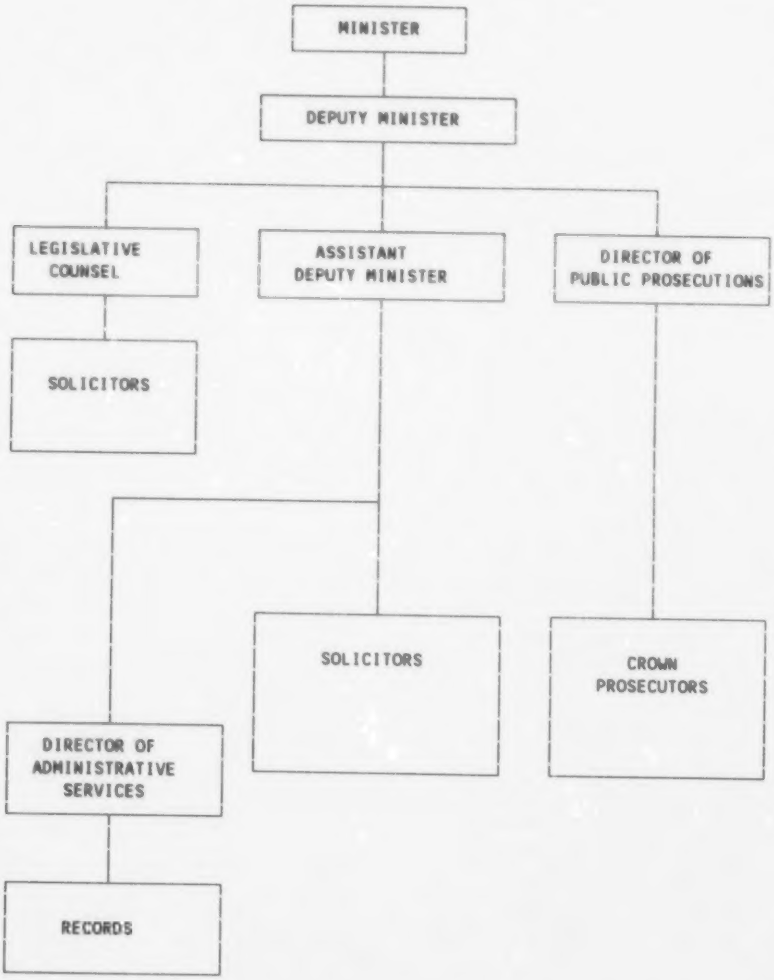
Appendix A, chart 5

ORGANIZATION
OF
DEPARTMENT OF EDUCATION
(TEACHER'S CERTIFICATION)
[1975]


MINISTER OF EDUCATION
DEPUTY MINISTER OF EDUCATION
ASSISTANT DEPUTY MINISTER - ACADEMIC
DIRECTOR ADMINISTRATION
ASSISTANT DEPUTY MINISTER VOCATIONAL-TECHNICAL
REGISTRAR - TEACHERS CERTIFICATION

Appendix A, chart 6

**ORGANIZATION
OF
DEPARTMENT OF JUSTICE [1975]**


MINISTER
DEPUTY MINISTER
LEGISLATIVE COUNSEL
ASSISTANT DEPUTY MINISTER
DIRECTOR OF PUBLIC PROSECUTIONS
SOLICITORS
SOLICITORS
CROWN PROSECUTORS
DIRECTOR OF ADMINISTRATIVE SERVICES
RECORDS

Appendix B

Commissioner's ruling delivered on October 17, 1989

Appendix B

Application by Douglas Kenny to determine
procedure before the Royal Commission
October 17, 1989

John Lavers for the applicant

M. Francis O'Dea, Q.C., for the
Christian Brothers of Ireland in Canada

George Horan, for the Government of
Newfoundland and Labrador

John Harris, for former residents of
Mount Cashel Orphanage

Philip Buckingham, for the Roman Catholic
Episcopal Corporation

Gwen Mercer, in person

David C. Day, Q.C. and
Clay M. Powell, Q.C., for the Royal Commission

THE COMMISSIONER (orally):

During argument I have referred to Mr. Lavers' request as a motion. I think that is probably giving it too much of the character of a proceeding in court. It is really an application to have me state at this time, well into the proceedings of this commission, what should be decided or what evidence should be produced in the future. Of course, the danger is that in our ignorance of the evidence that may be given or of what may be disclosed, it is difficult to provide limits to the exercise of my discretion which I take from the case of *Nova Scotia (Attorney General) v. Nova Scotia (Royal Commission Into Marshall Prosecution)* ([1989] 2 S.C.R. 788, at p. 794), I am entitled to do. I avoid the use of the word 'parameter' because of its special technical mathematical meaning which has been overlooked and abused by people who find it a convenient expression - or should I say synonym? - for limits. Mr. Lavers specifically asks for a direction that certain witnesses, who made complaints as to the making of which this commission is bound to inquire into, must be confined to what they told the police - the Royal Newfoundland Constabulary - in 1975, in the first place; and in the second place, that the proposed order of witnesses regarding which counsel to this commission have to some extent changed their original position, should be adhered to, and that Mr. Robert Hillier, formerly of the Royal Newfoundland Constabulary, should be called at this time and that his first report and the statements which were taken by him and under his direction that are appended to it should be introduced into evidence now. Commission counsel have said that they changed their mind about this; wishing, in the interests of complainants who have been located by the commission and the protection of them as witnesses, that each one should be called and his statement should be put to him and then in due course Mr. Hillier should be called to describe from his stand-point how the statements were taken and how he was motivated, to use a word of doubtful coinage, to proceed with them.

I have no difficulty with adopting the view of commission counsel in this matter. I am particularly concerned for the protection of witnesses who may have to give a painful narrative and again, particularly, because of what use or abuse may result from the release at this point of the statements as a whole. In this connection, although I certainly have no complaint about what we commonly call nowadays the media, the task of a commission is to a great extent complicated by the visual dissemination of its proceedings over a large part of the community and indeed, in the event of this commission, the national community. Such was not always the case and indeed there was some resistance to television in the courtrooms and in connection with commissions of this type. I confess that I was fully opposed to transactions of courts and commissions of inquiry being photographed and disseminated in this way. I am permitted, I hope, to change my mind, but I confess to having resisted this for reasons which I thought good and sufficient in the past. Now the question has been decided and commissions of this type have acceded to the arguments for access by the media and I would be doing myself and everybody else an injustice if I sought to revive feelings, strong though they were, that I had maintained in the past.

Speaking about the past, I want to make some comment first of all on what Mr. O'Dea said about his concern and astonishment that the rule of law did not seem to prevail in the case of Royal Commissions. As to that I can only say that, in my respectful view and in the sense used by him, it never has, except as to the power, and the growing power, of the courts to review judicially the transactions of a commission when an application has been made. But inquiries of this type are, as has been said, consecrated by antiquity and nowadays dictated by necessity. It does not need any demonstration by me to show that Royal

Commissions certainly antedate any form of parliamentary government, and any form of curial or court procedure that we now enjoy. Through much of their history they have been regarded as instruments of tyranny, and such I hope and trust is not the case today. They are, except as I have mentioned, outside the normal legal process and the administration of justice. They are an emanation of the executive and in that connection I must say I have read with interest and admiration what Mr. Lavers furnished me with yesterday and that is the Honourable Mr. Justice Mahoney's Report as commissioner of inquiry into the *Purchasing Procedures Of The Department of Public Works & Services* in the Province of Newfoundland, in connection with which he reported to the government on March 31, 1981. He adopted what fell from Mr. Justice Laidlaw in his dissenting judgment in *Re The Ontario Crime Commission, Ex parte Feeley And McDermott*. (I do not insert the reference to the law report because I have not got it before me and he does not use it. He puts in a footnote which refers, I suppose, to the citation for the decision of Mr. Justice Laidlaw in a part of his report with which I was not furnished; subsequently ascertained by me to be: [1962] O.R. 872 (C.A.) at pages 875 and 876.) The statement has become a classic and is as quoted by Mr. Justice Mahoney:

> ... the investigation of the matters into which the Commissioner was appointed to examine does not resemble in any way a trial in a Court of law. A hearing by the Commission has none of the attributes of a trial. There is no charge or accusation of wrongdoing and there is no right in question affecting "the purse, person, or property" of any person. ... There is no lis inter

> partes and there are no parties to the proceedings. There is no contest in any matter and there are no litigants before the Commissioner. The inquiry is purely investigative in character. It is a search for facts and the truth or otherwise respecting allegations of malfeasance, misfeasance or nonfeasance in the administration of certain public affairs.
>
> . . . .
>
> After full investigation with the aid of Commission counsel ... it becomes the duty of the Commissioner to make findings of fact and to report upon the matters which were the subject of investigation. It is not any part of his duty to determine any right or the guilt or innocence of any person. He does not exercise the functions of a Judge or jury and does not act in a judicial capacity except in the sense that he must be honest, fair and impartial in the conduct of the inquiry and in the report to be made by him. He does not pronounce judgment as between the Crown and subject or between subject and subject and his report has no legal consequence although it is possible that action might be taken thereafter and by reason thereof.

Mr. Justice Mahoney said, "I concur with Mr. Justice Laidlaw's analysis", and indeed it could hardly be more plainly stated. That does not mean, in my respectful view, that a commissioner has no business considering the credibility of evidence and making findings of fact based thereon. The difficulty here is to what extent limiting his function to merely listening to statements made to the police can and will impair his ability to decide whether the investigation was necessary in the first place or whether the Department of Justice in this instance decided with reason that the whole complaint was a mare's nest inspired by malice and without truthfulness. That is possibly an extreme projection of what might be the result of saying that I, as commissioner here, should not make findings as to whether the complaints were of substance or were so trivial that the suspension or termination of any inquiry, which has been suggested has happened, might be justified. All these things require, it seems to me, under my terms of reference the calling of evidence on which the substance of a complaint made can be tested.

Proceeding from there, although commission counsel initially attempted to compartmentalize and did in fact compartmentalize the evidence into various phases, there is no question that any evidence given can apply to any phase, and even, I should say, evidence which I am entitled to receive by way of memorial and not attested to on oath in the hearings of the commission. That, it seems to me, is trite law, although we wish to be as open as possible. With the professional backgrounds of so many of us, as Mr. O'Dea has emphasized, we tend to analogize these proceedings to those in court. The fact is that there is no obligation for a commissioner to insist on having all forms of evidence given from the witness box. Nonetheless it is desirable, and indeed it makes sense, to test by the traditional methods which have grown up over the generations in court as much of the evidence as it is possible to get and possible to hear.

Appendix B

Now, my terms of reference have been much in issue in this application and I must say there are some features which may or may not be due to draughtsmanship that might have been different on second thoughts, and one must remember that though we are bound by the terms of reference, they are also the result of human agency and although we must comply, we may make observations that perhaps other things were intended. That, I think, applies to the recitals of the constating instrument, and the preliminary to paragraph I of the document signed by His Honour on the first day of June, 1989.

Counsel have invited me to consider the meaning of the words preliminary to paragraph I, these being the words immediately following those appointing me:

> ... to be a Commissioner to hold an Inquiry into the matters following, without limiting the generality of the foregoing, and any other matters associated therewith, that is to say:

and then paragraph I, which reads:

> I. to inquire into an investigation by the Royal Newfoundland Constabulary into a complaint or complaints of child abuse alleged to have been committed at Mount Cashel Orphanage in St. John's which culminated in two police reports, which were prepared and dated December 18, 1975, and March 3, 1976, respectively, and in particular to determine: ....

As you all have said, you are familiar with the specific matters which follow, in a list, in paragraph I.

What is "foregoing"? Am I right in thinking that whether or not you take the view that this expression "without limiting the generality of the foregoing" should have appeared after the words: "and in particular to determine", at the foot of paragraph I, and before the specific (a), (b), (c), (d) and (e), and the rest of the subparagraphs listed, the recitals from the first "whereas" must all be taken into account when deciding that point? I can only find that the words: "without limiting the generality of the foregoing" must refer to the words: "to be a Commissioner to hold an inquiry into the matters following". So all those matters must be taken into account. "The matters following" present a problem which I would like to give more thought to, but I shall endeavour to resolve it in the course of the remainder of these reasons.

It has been pointed out that paragraphs I (c), (e) and (i) militate against any construction of the terms of reference as sought by Mr. Lavers, supported by Mr. O'Dea and Mr. Buckingham. Yesterday, during the course of counsel's arguments, I said that the language of subparagraph (e) of paragraph I,

> ... whether either or both police reports contained sufficient information to cause the Royal Newfoundland Constabulary to swear informations alleging breaches of the Criminal Code against any person or persons;...

requires me to receive any evidence as to whether the statements as drawn by the police and signed by the complainants in 1975 told the whole story, and any attempt to confine the evidence to what is contained in four or five lines, as in some of the statements, would derogate from the application of that subparagraph in so far as it requires me to make a finding as to whether there was sufficient information tendered to those members of the police and the Department of Justice who had discretion as to whether prosecutions should be undertaken. I do not attempt at this point to suggest that discretion was either non-existent or not properly employed.

It has also been pointed out that subparagraph (i) of paragraph I

> ... whether any report of child abuse was made to a Social Worker, the Director of Child Welfare, or any other official of the Department of Social Services by any person in accordance with the requirements of *The Child Welfare Act*, and if not, why not; if so, was it acted upon?

changes the direction of the terms of reference as begun in paragraph I and Mr. Powell and Mr. Day argue that it is linked, not to the provisions of paragraph I in so far as they confine the investigation to or appear to confine the investigation to the police reports of 1975 and 1976, but to the provisions of paragraph II which begin as follows:

> To inquire into the then prevailing policy or practices of the Department of Justice and the Department of Social Services with respect to allegations of physical or sexual abuse of children and, in particular,...

and it goes on. I will not read the particulars at this point.

I think it must be said that contention is right in part, and that the contention that is made by the applicant is right in part in the sense that paragraph I must refer to reports of child abuse made at the time material to the police investigation contemplated by paragraph I, or at times preceding it or following it at a reasonable interval, and that it can be and must be linked with the provisions of paragraph II.

Let me say also about compartmentalizing the proceedings that the commission cannot be bound by what counsel say in their opening statements unless those statements are translated into rulings by the commissioner, nor should counsel to the commission or any participant be bound by what they have said unless it is something which deceived other participants to their detriment. If it were so the inquiry would be frustrated on the occasion of any unexpected turn of events revealed by the evidence or by the investigation of the commission's officers which is an on-going proceeding and which may and indeed has turned up unexpected evidence. For instance I think Mr. O'Dea referred - certainly Mr. Day did - to the occasion where there was an inadvertent naming and the wearer of that name was allowed to testify and deny the accusation. I do not remember anybody objecting at the time to that evidence on the grounds that the commissioner was not concerned with the truth of the statements or the guilt or innocence or any particular party. That is by the way. Too rigid an adherence to that view would have prevented that sort of appearance, and are we now to say that the allegations that have been made against some members of the Congregation of the Christian Brothers must be received in silence because the commission is not interested in whether they are true or not? I think that would be adhering rigidly to what counsel may have said before any of this evidence was called, and any of the subsequent developments revealed.

I am convinced that there is danger in giving *a priori* directions at this time. Mr. Lavers is quite justified in suggesting that it would be convenient if he did not have to rise and protest every time there was what he considered to be an irrelevancy, and I am certainly in sympathy with that view, but because I am unaware of the nature of the evidence that is to be called, I would be quite wrong, in my view, in setting limitations as to what may be given at this time or indeed at any time, although I would not exclude the possibility of doing so at the beginning of an inquiry, and I am glad I was not asked to do so.

What we are to proceed with is the evidence of witnesses who made complaints. I am convinced that for their protection it should be given on the basis that commission counsel have outlined, and that the evidence of Mr. Hillier and the production of his report to which written records of the complaints are attached should be postponed to hearing evidence of those who made complaints in the course of which I understand that the individual statements will be presented to the complainants and they will be asked to remember in fact.

Earlier in proceedings of the commission I have spoken about the tricks of memory, and particularly as to events that take place in the childhood of people who have now reached the prime of life. I do not know whether I will be offered any evidence from professional witnesses as to what those tricks may be, but I think our common experience suggests that memory is sometimes fallible, and I would say almost notoriously misleading in the case of recollection of adults as to what transpired in their infancy. If, as I think, I must from time to time make findings of fact which are of relevance to the terms of reference of the inquiry, I hope it will be agreed that the recollections of these witnesses must be very closely examined as to what statements were given and as to any other relevant evidence they give.

Finally, I apologize for the discursive nature of these reasons which are given, of course, as shortly as possible after the arguments to which I listened. I think that the public interest must be taken into account and any appearance of concealment should be avoided, subject to the protection of the rights of witnesses and participants. The applicant here may be assured of my own sympathy and concern with unnecessary accusations unsustained by credible evidence and with consequential injurious reflections on the characters of people named. I have said before in another ruling (and I think it was a ruling made on 11 September 1989 as to the entitlement of the Estate of the late Judge McCarthy to participate in the hearing) that in times past and times not very long past, there was no question that there were no "participants" in a commission of inquiry, that the inquiry was purely investigative, that the function of the commissioner was purely fact-finding, and that any evidence brought forward was through commission counsel only. That was certainly the case in *The Royal Commission Appointed To Inquire Into The Failure of Atlantic Acceptance Corporation Limited* (July 1965 to September 1969) of which I have personal knowledge. Then, as a result of judicial review, particularly by the Supreme Court of Canada, which is binding on us here, we find participants with the right to call evidence to combat any conclusions that they feel might be arrived at by the commissioner as a result of evidence called.

Appendix B

As I said at the time (11 September 1989) to Mr. Chalker, Q.C. who is representing that Estate, the applicant here can always be present and seek the assistance of commission counsel to ask protective questions. I also then said that I was prepared, even though it was not provided for in the *Public Enquiries Act* of Newfoundland (S.N. 1970, c.314), to give effect to what is in the *Inquiries Act of Canada* (R.S. 1985, c.I-13) and public inquiries acts in some other provincial jurisdictions, to recognize the right of participants or anybody against whom a reflection adverse to their reputation is made to call witnesses or as the case may be. I do not resile from that if it is so required. I may say that in the case of the 'Atlantic Acceptance Inquiry', where the evidence lasted for two years and I was not obliged, as the law then stood, to allow anybody but commission counsel to call evidence, I made provision for hearing counsel of people affected to make representations and to call witnesses, and at the end of two years nobody showed up. That may have been the process of attrition - I do not know - but it was unfortunate in a way.

I must tell you therefore that the application, in so far as it is an application, is dismissed and I, like Mr. Harris and Ms. Mercer, agree with the representations made by commission counsel in this case.

Police report dated December 18, 1975
(edited version)

The following police report of December 18, 1975 was accompanied by handwritten statements as received and a typewritten version thereof. Because of some inaccuracies in the transcription, the printed statements contained in this appendix have been copied direct by commission staff from the handwritten statements. Excluded from the copied versions are the statements provided by witnesses who appeared before the Royal Commission *in camera*.

Appendix C

NEWFOUNDLAND CONSTABULARY
ST. JOHN'S, NEWFOUNDLAND

DIVISION C.I.D.

DATE December 18, 1975

Ref.#7855

SUBJECT Re: Homosexual acts and Child abuse at Mount Cashel Orphanage, Torbay Road, St. John's, Nfld.

Sir:-

I respectfully report that I was detailed by Det. Inspector C. Yetman to investigate a complaint made by Mrs Carol Earle, 360 Duckworth Street. Det. R. Pitcher assisted me with the investigation both with interviews and interrogations.

Mrs Carol Earle has two Sons at Mount Cashel Orph -nage namely, Shane age 9 years and William age 11 years. Mrs Earle states that on Sunday, Dec., 7th., 1975 it was brought to her attention by a Chesley Rich,(Whom she does not know) that her Son Shane, had been beaten by a Brother at the Orphanage and as a result left bruises on his back side. He also told her that sexual passes had been made by a Brother toward her Son William. As a result of these alleged Statements made by Mr. Rich, Mrs Earle took her two boys from the Orphanage until an investigation was carried out by the Police.

During the investigation I contacted Mr. Rich by telephone for the purpose of getting together with him for an interview but he refused to come to my office and also failed to keep two appointments, for me to interview him outside of Police Headquarters. To date I have not discussed this matter with him in person. He stated by telephone that he knew what was going on at the Orphanage and said its up to the Polic to do something about it. He said he was a volunteer worker at the Orphanage.

I went to the home of Mrs Earle and interviewed Shane Earle. He stated that he was beaten on the back side with a stick by Brother Burke. I examined Shane and noticed several bruise marks on his back side. The more pronounced bruises were on the right side. The bruises according to the boy occurred after a beating given him by Brother Burke on Saturday, Dec., 6th, 1975 My interview with the boy was on Dec., 9th., 1975, three days after the boy was allegeg to have been beaten. Mrs Earle took Photographs of her Son's back side showing bruise marks. The boy was also examined by a Doctor who will be forwarding a report on his findings. The boy appeared to be very bright for his age and when asked if he wished to go back to the Orphanage he replied, "no", he would rather be home because he was afraid of the Brothers. A written statement was not taken from him due to his age.

William Earle was interviewed and a written Statement taken from him. He states he has been bothered by Brother English who on several occasions has took William's hand and forced it in-side his shorts and made him feel his (Brother English) bird. He said during the past year he has been bothered by Brother Ralph whom he said visits him practically every night after he goes to bed. He tells him to turn in to the wall and then he puts his hand inside the boys pyjamas and feels his bird. Terry Brinston, age 16 years witnessed Brother Ralph doing this with the boy. This boy also referred to Brother Kenny and mentioned how Brother Kenny kisses himeon the lips and asks him to bite his neck. He made special mention of an occasion with Brother Kenny when working at the swimming pool.

From information received it appeared necessary to interview the following boys. Written statements were obtained from those ten years of age and over.

[redacted]	age 13 years
Leo Gerald Rice	age 17 years
Terry Joseph Brinston	age 16 years
[redacted]	age 15 years
Johnny Williams	age 15 years
Andre Walsh	age 14 years
[redacted]	age 11 years
Derek O'Brien	age 17 years
Gregory Preshyon	age 14 years
Peter Brown	age 13 years
Robert Connors	age 12 years
Gerald Nash	age 13 years
[redacted] E[redacted]	age 8 years
[redacted] R[redacted]	age 9 years
Gregory Connors	age 11 years
[redacted] B[redacted]	age 12 years
[redacted] J[redacted]	age 10 years
[redacted] P	age 9 years
Ian Pumphrey	age 9 years
John Pumphrey	age 14 years
[redacted] O[redacted]	age 12 years
Malcolm Baird	age 14 years
Edward Strickland	age 12 years
Frank Baird	age 11 years

Written statements were not taken from the three last named. Malcolm Baird, Edward Strickland and Frank Baird. These three are brothers and are now at home with their Mother Mrs Carol Baird, #46 Donovan Street, Mt. Pearl. The boys were taken from the Orphanage by their Mother because she was told by her Son Malcolm of Brother English who was feeling him up when he was in bed at night.

On this date Dec., 17th., 1975 I interviewed both Brothers Ralph and Brother English.

(1) Brother Alan Ralph
Age 31 years, D.O.B. Oct., 22, 1944
Holy Cross, Patrick Street.

(2) Edward Patrick English
Age 27 years, D.O.B. Aug., 15th., 1948
Mount St. Francis, Merrymeeting Road.

Both Brothers Ralph and English were interviewed individually and were given the Police Caution, which they stated they understood. Brother Ralph gave a written statement but Brother English did not wish me to write it down but verbally he admitted questions that I asked him.

During my interview with Brother English I made particular reference to statements given me by the following boys, namely, Andre Walsh, Johnny Williams, Leo Gerard Rice and Malcolm Baird. Brother English was questioned considerably on these statements and he admitted that what these boys have stated intheir statements is true. He also admitted to having been involved with the following boys and states that he has been involved with them as they have stated in their statements. William Earle, [redacted] Robert Connors, Peter Brown, [redacted] J[redacted], [redacted] P[redacted] Ian Pumphrey, [redacted] B[redacted], Gregory Connors and [redacted] O[redacted]

Brother Ralph admitted to feeling up four boys and names them in his Statement. Reference was made by me, to the statements given by the boys and he admitted the boys were telling the truth.

Mention was made in some of the statements taken from the boys concerning the following Brothers.

Brother Kenny
Brother Burke
Brother Short.

Brother Kenny was mentioned by some boys who was displeased with the way in which they were being kissed by him. They also stated they have made complaints to Brother Kenny about the way they have been treated by other Brothers and he would not look into the matter and instead would apparently try to cover it up by telling the boys to say nothing about it.

Brother Burke was mentioned by three boys namely, Shane Earle, Robert Connors and Gregory Connors who states they have been beaten by him with a stick which on occasions has caused blistering to their back sides.

Brother Short who is now at St. Pats use to relieve the Brothers about two years ago by filling in for them on Saturdays. Leo Gerald Rice, age 17 years, states that about two years ago Brother Short got him to masturbate him three or four times when at Mount Cashel Orphanage.

Sir: Neither Brothers, Kenny, Burke or Short has been interviewed by me concerning these incidents and at this time the investigation is discontinued, pending further instructions.

R. Hillier
R. Hillier
Detective

Respectfully submitted,

C. Yetman
C. Yetman,
Det. Inspector

J.F. Lawlor, Esq., J.P.
Chief of Police

Statement of Carol Earle

I am 34 years of age and reside at 360 Duckworth St. I have been divorced for about one and a half years. I am the mother of seven children, three boys and four girls. Three of the girls are on Bell Island in a fosture home. One girl is with her grandmother, one boy is with the father, William Earle and the two other boys namely Shane and William are at the Mt. Cashel Orphanage. Shane is nine years of age and William is eleven years of age.

On Sunday past, Dec. 7th, 1975 Ches Rich came to my home at 360 Duckworth St. At this time he had with him both children from Mt. Cashel, Shane and William. This was about 3:00 pm and Mr. Rich stated that the brothers at the orphanage had mistreated Shane and had used a belt on him. I examined Shane and found bruises on his back side. Ches Rich also stated that sexual passes had been made toward Billy.

I had never met this Mr. Rich before except to speak with him between three and five weeks previous to this incident. At that time Mr. Rich had taken my two children to Bell Island to visit their sisters and on his return to St. John's he dropped the children off at my home for supper.

My older son Ricky, who is now 16 yrs. of age was also in the Mt. Cashel Orphanage over seven years ago and since he has got out he has told me that the brothers in the orphanage was a bunch of queers.

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I would like to have the matter investigated to find out if my children have been abused by the brothers at the orphanage. I wishes also to find out what Mr. Richs involvement is with the orphanage to have the children out and doing what he like with them.

My two children are now home with me and I intend to keep them with me until the investigation is completed by the Police.

Sgn. Carol Earle

Witness:

R. Hillier Det.
Dec 10th/75 at 8:25 PM

Statement of [name deleted] B.

I am 12 years of age D.o.b. March 12th, 1963 and reside at Mt. Cashel Orphanage.

I have been at the orphanage for about a year and I like it. The only problem I have is with Brother English. He is always feeling me up with his hands. On many occasions he has been lying on my bed and has called me and told me to feel his leg. I told him no but had to do it as he would call me back if I left. He would take my hand and move it on his bird outside his pants. Many times when I've been in the carpet room he has come up behind me when I been watching TV. He catches my hand and puts it behind my back. He then moves it on his bird and starts moving his body. He is always putting his hand inside my pants and puts it on my bird. on one occasion in Holyrood we were swimming and he did it.

Sgn: [name deleted] B.

Witness:

R. Hillier Det.
Dec. 12th/75 at 10:30 AM

R. Pitcher Det.

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Statement of Ian Pumphrey

I am 9 yrs of age D.o.b. May 9th, 1966 and reside at Mount Cashel Orphanage.

I have been at the orphanage for about four or five months and have two brothers there as well, Shawn and John. At the home its pretty good but Brother English and Brother Ralph does things to me that I don't like. About four or five times Brother Ralph puts his hand inside my pants and felt me. once Brother Ralph came to my bed and put his hand inside my pyjamas. At this time he did not touch my private parts.

Brother English is the worse one as he is always putting his hand inside my pants and inside my shirt once he put my hand on his stomach. When I am running around he grabs me and makes out he is fooling around and he then puts his hand inside my pants.

Sgn. [not signed]

Witness:

R. Hillier Det.
Dec. 12th at 11:00 AM,

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Statement of Robert Connors

I am 12 yrs of age, D.o.b. Oct. 22th, 1963 and reside at Mount Cashel Orphanage.

I have been living at the orphanage for the past five or six years. Ever since I've been in there Brother English has been feeling around me. He puts his hands inside my pants but he don't touch my bird. I know he also goes after other boys. On several occasions Brother English has come to my bed during the night and put his hand on my back side and felt me up.

Brother Ralph also used to come to my bed during the night and standing by my bed he used to put his hands underneath the bedcloth and then put his hand inside my pyjamas and rub my back-side.

We have a name on Brother English because he feels the boys up. We calls him "jigger".

I do not have any trouble with any of the other brothers.

Sgn. Bobby Connors

Witness:

R. Hillier Det.
Dec. 12th, 1975 at 11:20 AM

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Statement of Gregory Connors

I am 11 yrs old d.o.b. Nov. 26 - 1964. I have been at Mount Cashel Orphanage for about five years. I am happy at the orphanage except for Brother Burke, Brother Ralph and Brother English. I don't like Brother Burke because he beats me for every little thing he beats me across my bare backside with a stick about three days ago Brother Burke took me into a closet and made me pull down my pants he hit me five or six times across my back side with a stick. He beat me because I threw a after shave tin into the garbage can it made a noise and Brother Burke was watching T.V. both Brother Ralph and Brother English on seven or eight times have caught a hold of me and have felt my legs and felt my bird. Sometimes this has happened when I have been in bed. Brother Ralph would sit down on the bed and feel my bird inside my pyjama pants. Most times Brother English would feel my bird when I was in the dining Hall he would do it sometimes when I was in bed.

Sgd. Greg Connors

Witness R. Pitcher Det.
12-12-75 11:25 A/M

Statement of [name deleted] P.

I am 9 yrs of age D.o.b. Aug. 28th 1966 and lives at Mount Cashel Orphanage.

I have been at the orphanage for about a year and a half. Ever since I've been at the orphanage I have been having trouble with Brother English. He feels me up all the time and puts his hands inside my pants. He tells me to play Doctor with him and when I do he puts my hand inside his pants and makes me play with his bird. He tells me to fool with the hairs and to move my fingers on his thing. I does this for him because I'm afraid he will hit me if I don't do it.

Today dinner hour Brother Kenny called me in a room at the orphanage and questioned me. He asked me if I had any trouble with any of the Brothers and I told him "yes" and told him that it was brother English. I did not tell him what trouble I had with Brother English. He told me not to discuss it with anyone.

[not signed]

Witness:

R. Hillier Det.
Nov. 12th at 2:05 PM

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Statement of Peter Brown

I am 13 years of age D.o.b. Jan. 11th, 1961 and I live at the Mount Cashel Orphanage.

I have been living at the orphanage for about a year and a half. I like it at the orphanage except for Brother English. Brother English has never bothered me sex wise but he is continuously trying to come up with an excuse to hit me. Every time I sees him I turns and gets away from him. He has beaten me on several occasions for nothing at all and I don't know why he is like that. He calls me names such as bastard, bitch and tells me he is going to kick the shit out of me. At this time I am in his dormetry and am requesting to get out of it. My mother is dead and my dad visits me regular. I goes home every sunday with my dad & I told him what brother English has been calling me. Dad talked to Brother English about it and he denied that he used to say it to me. I am very disturbed and I'm upset at the orphanage all because of Brother English. I don't have any trouble with anyone else.

When I first went to the orphanage Brother English used to feel around my legs and a little while after my friends told me about him and now I keeps away from him.

At the orphanage there is a lot of bad stories around about things Brother English has been doing.

Witness Sgn. Peter Brown
R. Hillier Det.
Dec.12th, 1975 at 2:40 PM.

R. Pitcher
Dec. 12th, 1975
2:35 P/M.

Statement of [name deleted] J.

I am 10 years old, d.o.b. March 13 1965 and I am at the mount Cashel Orphanage for the past four years. I am happy being in the orphanage except for Brother English. Since last year a lot of times Brother has got me to feel his bird. Sometimes when [name deleted] P. & I are together Brother English would get the two of us to feel his legs and his bird outside his pants. some nights when I am in bed Brother English tells me to turn into the wall then he comes over and stands by my bed and begins feeling my bird. he does this inside my pyjama pants.

when [name deleted] and I are watching T.V. Brother English won't let us watch it he always wants us to feel his bird for him. I am quite happy in the Orphanage except for Brother English. Today Brother Kenny called me into his office and asked me if I had any problems with any of the Brothers. I told him about what Brother English was doing. Brother Kenny told us not to tell anyone about it.

[name deleted] J.

Witness
Det R Pitcher Dec 12/75

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Statement of William Earle

I am 11 years of age, D.o.b. March 14th, 1964 and reside at Mount Cashel Orphanage. I am presently staying with my mother Carol at 360 Duckworth St.

For the past two years I have been at the orphanage. The first year at the orphanage I was in the dormetry with Brother English. Brother English bothered me three or four times when I was watching TV. There was other boys around when he used to take my hand and push it inside his shorts and make me feel his bird. He used to keep my hand there with his hand by holding on to me.

When I went to the Dormetry with Brother Ralph he wasn't very nice. Pretty well every night during the past year he would come to my bed after I got in bed and asked me to turn in. He would then put his hand inside my pyjamas and feel my bird. He would have his hands all over me. on one time a boy Jerry Brinston caught Brother Ralph feeling me up and the next morning Brinston told me to tell Brother Burke about it. He told me not to tell Brother Kenny because he is also a bit like it. I told Brother Burke about it and he told me not to mention any more about it and not to tell the rest of the boys. I was afraid to tell Brother Kenny because he might hit me.

About two weeks ago I was at the Swimming Pool at Mt. Cashel with Brother Kenny. There was no one else around and Brother Kenny started kissing me on the lips. He told me to bite his neck and I did it once. He said it was good. He told me to do it again. Another time I went to his office to get some money from my bank and he again kissed me on the lips. I didn't like it but I did it because I thought he might say something to me if I didn't do it.

Sgn. Billy Earle

Witness:
R. Hillier Det.
Dec. 13th, 1975 at 11:30 AM

R. Pitcher Det
Dec. 13th 1975 at 11:30 A/M

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Statement of Roy O'Brien

I am 12 yrs, of age D.o.b. Feb. 14th, 1963 and reside at Mt. Cashel Orphanage.

Since I have been at Mt Cashel in the past two years everything has been pretty good except for Brother English. The first two weeks I was at Mt. Cashel is when Brother English used to be at me. He one time held on to my hand real hard and forced it down inside his pants. I tried hard to keep from doing it but he kept forcing me. My hand went down and touched his private parts. I got away from him and ran. Another day he tried to make me do it and I wouldn't go near him and I went and told my older Brother Derek who is also in the orphanage. Derek waited for awhile and he went and asked Brother English about it. I am in Brother English's dorm and I saw him feeling up Malcolm Baird in a cloth closet one night. A while after I heard Brother English tell Malcolm he wanted to see him that night and in the same place.

Brother English and Brother Kenny both have big rubber straps and quite often boys are strapped for nothing and often the brothers are wrong. Both Brothers Kenny and English straps very hard. Billy Noseworthy and Ronnie O'Brien who is my brother both had blisters on their hands and up their arms. Brother Kenny strapped me for running away and left blisters on my hands. Brother English tried to stop us from telling anybody about the strappings.

Sgn: Roy O'Brien

Witness:
R. Hillier Det.
Dec. 13th, 1975 at 2:30 PM.

R. Pitcher Det.
Dec. 13th, 1975 at 2:30 P/M

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Gregory Connors

Further to my statement on Dec. 12th, 1975:

About three or four times I've been in Brother Kennys office when he asked me to bite his neck. I bite his neck when he asked me too and I also saw two other boys biting his neck. The two others who did it were [name deleted] R. and Craig English. Brother Kenny didn't do anything else to me.

Sgn. Greg Connors

Witness:
R. Hillier Det.
Dec. 13th, 1975 at 2:55 PM.

R. Pitcher Det.

Robert Connors

Further to statement dated Dec. 12th, 197 at 11:20 AM.

About four months ago Brother Kenny was fixing the swimming pool and he asked me to come over and Clean the floors in the dressing room. About twenty minutes after I went to the dressing room, Brother Kenny sat down on the stools to take a rest. He Called me to Come over and take a rest. I sat two or three feet away from him and he moved closer to me. He told me to bite his tongue which I did about three times. He also put his tongue in my mouth. He told me to bite the tip of his tongue. He also kissed me several times on the mouth the same day. The day before this again in the same place he told me to bite his neck which I did. I didn't want to do anything like this but I was afraid he would get mad if I refused.

Last Saturday Brother Burke hit me six times with a leather belt on the back side with my pants up. He then took me into a closet and made me take my clothes down including my shorts. With a round stick about a foot long he hit me on my bum. The same night when I was getting ready to go swimming the other boys told me I had blisters on my bum which was caused by the stick. (There is a stick got written on it, "OUCH" and he have also hit me with this one once before). He hit me twice with that one. I have heard the brothers are not allowed to have these things.

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Other boys at Mount Cashel also have been beaten with these sticks and strap. One is Brian English.

Sgn.

Witness:
R. Hillier Det.
Dec. 13th, 1975 at 3:30 PM

Bobby Connors.

Statement of Jerry Joseph Brenston

I am 16 yrs old d.o.b. Nov. 14th, 1959. I have been at Mount Cashel orphanage for the past two years. I don't like it at the orphanage because there is too much going on. Sometime in September or October Brother Kenny got me in Brother Thorne's office where he hit me several times in the face and stomach he grabbed my by the hair and began slapping my face with his hand. one time this summer he swore on us he told us to get on the "fucking bus". he told us to "pack our God dam bags and get out through the Jesus gate". he Chastise us for swearing, then he swears on us himself. I have heard stories about Brother Kenny and Jimmy Fahey being together a lot. [name deleted] who is left the Orphanage now told me him and Brother Kenny were out in the barn on the back of the Orphanage and Brother Kenny was feeling him up and doing things to him.

About three weeks ago I received a beating across my back side with a leather strapp he put marks on my backside he did this because I was smoking. one time this summer, Brother thorne hit me with a piece of board across my backside, he also hit me with a strap. He did this because I spoke to one of my friends that was in the sick room.

Sometime in October month I went into St. Stands dormetory at about 8:45 p/m. I caught Brother Ralph with Billy Earle on the bed Brother Ralph had his hand inside Billy's pants feeling him up. When Brother Ralph saw me he pulled out his hand. The next day I told Billy to tell Brother Burke about it because he is the only one I trust after hearing stories about Brother Kenny I don't trust him.

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The first week I was at the orphanage I was out in the poarch, when Brother English came he put his hand inside my pants and began to feel me up. he wanted me to put my hand inside his pants which I did. At this time another boy came and he stopped. a little while after Brother English got me to go out to the Goulds with him to bring out some tapes on the way out Brother English began feeling me up he asked me to give him a blow. he forced my head down on his penis and I took it in my mouth. I don't believe he came as a car came and he got up. I was after smoking some dope before this but he didn't know it. I am still smoking some dope but the Brothers don't know about it. Malcolm Baird, one of the boys told me Brother English did the same thing to him a little while ago just before Malcolm left the Orphanage.

The incident with Brother English and I took place in by an overpass by a Drive-In. I was 14 yrs old when this took place. that was the first week at the orphanage.

Jerry Brinston

Witness
Det. R Pitcher
Dec. 13th, 1975
3:50 P/M.

R. Hillier Det.

Statement of Dereck O'Brien

I am 17 years old d.o.b. Oct. 2, 1958 and I have been at Mount Cashel Orphanage for the past two years. I like it at the Orphanage. I have never had any problems myself I feel that I am to big for the Brothers to try any thing with me. I have a younger brother Roy at the orphanage, he is 10 yrs old. About the first two weeks we were there Roy came to me and told me Brother English got him in the dorm and wanted him to give Brother English a blow. I told Roy if Brother English tried it again to let me know. as far as I know it didn't happen again. My other Brother Ronnie age 13 yrs came to me because he was hit by Brother English I looked at Ronnie's back and I saw marks across his back like they were made by a broom handle. I went to Brother English and told him not to hit Ronnie again. I went to Brother Kenny about it but he didn't do any thing about it as far as I know. Ronnie wasn't hit after that. One time last year I saw Brother English and [name deleted] in the Carpet Room Brother English was feeling [name deleted] up. they then went upstairs to the dorm. myself and some other boys went to the dorm and looked in. I saw Brother English going right to town on [name deleted], he was kissing him he had [name deleted]'s pants down to his knees. Brother English was doing Homosexual acts on little [name deleted]. [Name deleted] heard us and told Brother English some one was comming so we beat it down stairs and acted as if nothing was going on. another time I saw Brother English with [name deleted] B. on his lap in one of the TV Room I saw Brother English take [name deleted] B.'s hand inside his pants. its a common occurance to see Brother English with his hands inside the smaller boys pants. I've heard stories about Brother Ralph but I don't know if they are true or not, Billy Earles and Bobby Connors told me Brother Ralph did the same thing to them a couple of times.

About ayear and a half ago Johny Williams come to me about a beating he got. I saw his back. it was a mess. his back was beaten to pieces. a little while after Johny Williams sister Brenda and Johny went to the welfare on Harvey Road where they reported the beating but nothing was done about it.

Sgd.
Dereck O'Brien

Witness

Det. R Pitcher
Dec. 14th, 1975
10:10 p/m

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Statement of Andre Walsh:

I am 14 years of age D.o.b. Oct. 26th, 1961 and live at Mount Cashel Orphanage.

I have been at the orphanage about eight years. Since I've been there I have found it pretty good. I got beaten a number of times but most times I deserved it but once I got beaten about a year ago by Brother English who strapped me on the hands with a leather strap. He hit me on the hands about sixty times and I begged for mercy but he wouldn't stop. This was just because I called a friend out of his name. My hands were really bruised and just above my hands on my wrist they were really beaten up as a result of the strap. Both of my hands are continuously peeling and cracks open since these strappings. My hands are now in a mess and I haves to put vaseline on them to keep them from drying up.

There is a lot of stories going around at the orphanage about the brothers having sex with the boys but they have not bothered me, in any way. Its about time that someone do something about some of the brothers, especially Brother English.

Sgn: Andre Walsh

Witness:

R. Hillier Det.
Dec. 14th, 1975 at 10:30 AM

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Dec. 14th, 1975, 10:50 AM

Gerald Nash
Age 13 years, D.o.b. Dec. 6th, 1962
Mount Cashel Orphanage

He saw Brother English grab, John Pumphrey between the legs.
Other things stated was hear-say.
He received some beatings as did others. R. Hillier

Bro Ralph has a stick he beats the boys with.

R. Hillier

[not signed]

Appendix C

Statement of Leo Gerard Rice

I am 17 d.o.b. March 19 - 58 and I have been at Mount Cashel Orphanage for the past nine years. I like it at the orphanage except for what Brother English is doing. I believe Brother English came there the past two years. After Brother came, two or three times he grabbed me in the coridor and would put his hand inside my pants and feel me up. about three months ago Brother English got me in his room. He was in bed and he got me to get in bed with him. both of us had our clothes off. Brother English tried to kiss me but I kept pulling away from him. he got on top of me I was face up. he had put his penis between my legs he was going in and out. he then took it out and put it on my stomach and he "came" on my stomach. he tried to pull me "off" but I din't want to so I left.

About three weeks ago Brother English took me for a ride one night he went out by the new Arterial Road. he pulled down his pants he kept putting my head down to his penis for to take it in my mouth. After a while I stopped resisting and took his penis into my mouth at this time he was trying to pull me off. but I din't want to. He din't come when I had it in my mouth so I gave him a few pulls. he then got horny and lid on top of me and he "came" on my stomach. I din't like what Brother English was doing but I din't feel like telling any one about it.

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About four years ago another Brother, Brother Short who is at St. Pats now. got me to pull him off three or four times when he was at Mt Cashel. giving the other Brothers a break on Saturdays.

Sgd. Leo Rice

Witness
Det R Pitcher
Dec 14th/75
11 A/M.

[name deleted] R.
Age 9 yrs. Oct. 31st,
Mt. Cashel Orphanage.

Bro Ralph is always going to beds after the boys. I saw Bro Ralph one night by Greg Connors bed and he had his hand inside Greg's pyjamas and was rubbing up and down Greg's leg. All the boys were watching him and we were having a big laugh.

Bro English is he same but I haven't seen him at it. The boys around the orphanage is saying they are both left and I hope they are.

Bro Kenny is alright, he only asks me to kiss his nick.

[not signed]

Witness
Dec. 14th, 1975, 11:20 AM

Bro English used to feel the boys up and then give them the gift from the corn flakes box.

R. Pitcher
Dec. 14th, 1975
11:20 A/M

Appendix C

Craig English

Age 8 yrs Dec 13th - 1966 been in the orphanage for two years. I have heard other boys talking about how Brother English was feeling their birds. he has never done any thing to me. I have heard some of the boys calling Brother English a Homo but I don't know what it means. I have heard [name deleted] J. and [name deleted] P. talking about Brother English. I have heard some of the bigger boys talking about Brother English.

[not signed]

Further: Dec 14th/75

Not every day but often Bro Kenny asks him to bite his neck. He does it for Bro Kenny when they are alone most times in Bro Kenny's office. Bro Kenny kisses him on the cheeks and on the lips.

Appendix C

Statement of [name deleted] D.

I am 11 yrs old d.o.b. Sept. 22 1964. I have been at Mount Cashel Orphanage for the past nine months. I don't like the Orphanage very much. Since I have been in the Orphanage Brother English have been doing dirty things. one time when I was out in Placentia for a long week end Brother English got me on the floor and held my arms, he took my hands and began rubbing them against his privates, he then would be going in and out on my hands. Several times in the Orphanage Brother English has rubbed my privates with his hands and has taken my hands and rubbed against his privates. Brother English grabbs me and squeezes me close to him and he goes in and out with his body. I have see Brother English doing this to lots of boys at the Orphanage but I cant remember who they were. I told my father about this, he told me to stay away from Brother English.

Sgd. [name deleted] D.

10.50 A/M

R. Pitcher
Dec. 15th/75

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Statement of John Pumphrey

I am 14 yrs old D.o.b. Sept. 16 - 61. I have been at Mount Cashel Orphanage for the past four months. I like it at the Orphanage, except for Brother English. Last week in the night while I was in bed Brother French came to my bed he sat down on my bed he put his hand under neath the clothes and tried to put his hand inside my pyjama pants until he felt my under wear. he asked me what I was doing with my under wear on and he took his hand out.

About two weeks ago I was in the reading room watching Brother English correct the adverages Brother reached over and tried to get his hand inside my pants but I knocked it away. About a month & a half ago my brother Ian also in the Orphanage came and told Dad that Brother English had put his hand down inside his pants. The only problem I have is with Brother English and Brother French.

Sgd. John Pumphrey

Witness
Det R Pitcher
Dec. 15th/75

Statement of Johnny Williams

I am 15 yrs old d.o.b. Sept. 3 - 60 and I have been at the Mount Cashel Orphanage for the past Eight years. I am happy at the orphanage except for what Brother English is doing. Last Halloween night I was getting ready for bed when Brother English told me to hurry on. I told him I was dressing as fast as I could. Brother English then grabbed me and hit me across my back with his hand. I was bruised for two weeks. I showed these bruises to my cousin Brenda Lundrigan at #37 Quidi Vidi Road. Brenda took me to the Welfare office on Harvey Road where Brenda reported it to a man there. I also told Brother Kenny about it, he told me to get out of his office.

one time Brother English took me for a drive out side the City he put his hand on my leg and tried to feel me up but I pulled away from him. he offered me a coke to lie on top of him but I din't do it.

Sgd. John Williams

Witness
Det R Pitcher
Dec. 15th 1975

Appendix C

Malcolm Baird
Age 14 yrs D.o.b. Nov. 23rd, 1961
46 Donovan St.

He was in the orphanage about two months. Brother English used to go to his bed-side occasionally and feel him up. He use to put his hands inside Malcolms clothes and fool around with his private parts.

Edward Strickland [not signed]
Age 12 yrs
46 Donovan St.

Frankie Baird
Age 11 yrs
46 Donovan St.

Dec. 17th, 1975
Statement of Brother Alan Ralph

Cautioned:

I am 31 years of age D.o.b. Oct 22nd, 1944 and presently residing at Holy Cross, Patrick St. I have been a brother for the past twelve years and has been staying at Mount Cashel Orphanage since September 1974. About October 1975 I became involved with a boy Robert Connors one night while he was in bed. All I did with him was rub his backside. This has been done by me with Robert on several occasions since October. I have also been involved with boys namely, Robert Connors, Ian Pumphrey, Gregory Connors and William Earle. I did not become involved with the boys as far as homosexually is concerned. All I did was rub their back sides, except for Billy Earle I did touch his pinus. I did not hurt either of the boys sexually. I know that I was seen by two boys namely, Jerry Brinston and [name deleted] R. when involved with the other boys.

Physically I have not injured any of the boys at the orphanage at any time. on occasions when I felt it necessary to punish a boy I did use the strap on the hands or back-side. I usually have faith in what I am doing and at not time has told them to cover it up by refraining to tell anyone about it.

Appendix C

I have never used a stick on the children in a physical way. I have had a stick for chastising the boys but never beat them with it.

Sgn. Br. Alan Ralph

Witness:
R. Hillier Det.
Dec. 17th, 1975 at 10:35 AM

Ralph Pitcher
Dec. 17th, 1975 at 10:35 A/M

Appendix D

Police report dated March 3, 1976
(edited version)

The following police report of March 3, 1976 was accompained by handwritten statements as received and a typewritten version thereof. Because of some inaccuracies in the transcription, the printed statements contained in this appendix have been copied direct by commission staff from the handwritten statements.

Appendix D

Form J 19

NEWFOUNDLAND CONSTABULARY
ST. JOHN'S. NEWFOUNDLAND

DIVISION C.I.D.

DATE March 3rd 1976.

AP/cp
Ref. #7855

SUBJECT Re: Further to my report dated December 18th 1975 concerning "Corrupting of Children" at Mount Cashel Orphanage, Torbay Road, St. John's, Newfoundland. (Refer Br. Sec. 168(1) C.C.C.)

Sir:

I respectfully report that as requested by the Minister of Justice I am forwarding this report on child abuse regarding assaults on a number of children by Christian Brothers at Mount Cashel Orphanage.

The following is a run down on the Brothers and the children with whom they have been involved, concerning child abuse:

1. Brother Edward Patrick English
Aged 27 years (D.O.B. August 15th 1948)

Brother English was involved with the following boys, namely:

(a) WALSH, Andre - Aged 14 years
(b) BROWN, Peter - Aged 13 years
(c) O[redacted] - Aged 12 years

These boys gave written statements to the effect that they have been beaten with a leather strap on a number of occasions by Brother English. Andre Walsh had his hands badly bruised when he received about sixty straps on one occasion. He said he cried for mercy for him to stop and he refused to do so. His hands were beaten up and blisters occurred above the wrists on both hands. This boy's hands at the time of my interview were obviously abnormal as they were peeling and cracked. Since the strapping he has to use vaseline on his hands to keep them from drying up. This boy cried as he held his hands out for me to view.

Peter Brown states he has been beaten on several occasions for no reason. He said Brother English is always trying to come up with an excuse to hit him. This boy shows his feelings very much and it is my opinion he is in bodily fear of Brother English. He has been called names such as bastard and bitch and tells Peter he is going to kick the shit out of him. This boy reported the matter to his father, who visits him regularly and his father asked Brother English about it but Brother English denied having said or done such things and this has made the boy more nervous.

[redacted] O[redacted] states he has been strapped by Brother Kenny a number of times and Brother English has tried to stop him from telling anybody about the strappings. He said brother English had a large leather strap and he strapped the boys very hard. He said Brother English often strapped him for nothing.

In reference to Brother Engoish I have interviewed eighteen boys who gave statements in which they tell of some frightening experiences they have gone through during the past two years. These statements are attached to my original report and the complete contents are not covered in this report. On December 17th 1975 accompanied by Detective R. Pitcher I interviewed Brother English. He was questioned concerning statements obtained from the boys and he admitted verbally that the boys did tell the truth.

2. Brother Alan Ralph
Aged 31 years (D.O.B. October 22nd 1944)

Four complaints were received from boys at the Orphanage pertaining to sex offences on the boys. None of the boys complained of having been beaten in any way by Brother Ralph. He admits in a statement attached to my original report of having been involved with the boys sexually. He also states he has used a leather strap on the boys hands and back side and also has been in possession of a stick, but only for chastising purposes. He has not beaten the boys with the stick.

3. Brothers Kenny, Burke and Short have also been mentioned by the following boys at the Orphanage:

(a) BRINSTON, Terry Joseph
(b) [redacted], Craig
(c) JACKMAN, William
(d) [redacted] Kenny
(e) CONNORS, Robert
(f) CONNORS, Gregory
(g) RICE, Leo Gerald
(h) EARLE, William

These boys gave written statements which are attached to my original report. In their statements five of the boys tell of how they are displeased about Brother Kenny, who has been kissing them on the lips and having them bite his neck and the tip of his tongue. Terry Brinston tells how he has been hit in the face and stomach by Brother Kenny and also slapped around by the hair of his head. Brinston tells of a beating he received across his back with a leather strap and as a result marks were left on his back side.

Robert Connors states he was beaten by Brother Burke who struck him several times with a leather belt. He was then put into a closet used to punish boys, told to take of his clothes and his bare back side was beaten with a round stick about a foot long. From this stick he received blisters to his back side as he was told by other boys in the Orphanage. This stick had written on it the following "OUCH."

Gregory Connors also complains of having being beaten by Brother Burke with a round stick and again this took place in a closet and the boy had of his clothes.

Brothers Kenny, Burke and Short were not interviewed by me concerning these incidents due to a slowdown in the investigation as requested by both the Chief of Police, J.F. Lawlor and Assistant Chief J.R. Norman.

This investigation first took place as a result of a complaint from Mrs. Carol Earle, 360 Duckworth Street, who, at the time, had taken her two sons, William and Shane out of the Orphanage. The younger boy, Shane, aged nine years complained of beatings by Brother burke and William complained of sexual passes by the Brothers. Photographs of bruises on Shane's back side were taken by Mrs. Earle and are now available and attached hereto. At the time of the complaint Mrs. Walters, Child Social Worker was called by Mrs. Earle who came and viewed the bruises on the child.

However, since my original report was forwarded, I checked out information given me by two boys, whose statements are attached to my original report. These statements are of Derek O'Brien and Johnny Williams, who are boty now at Mount Cashel. Both boys stated they reported about child abuse to the Child Welfare about a year and a half prior to my previous report. They also stated they were accompanied by Brenda Lundrigan, who is a cousin to Johnny Williams. I obtained two statements from Brenda Lundrigan, in which she tells of how she reported the matter of Johnny having been beaten by Brothers at the Orphanage and nothing was done about it. A check at Child Welfare showed that this report had been made by Miss Lundrigan and apparently the information passed on to the Department of Child Welfare at Confederation Building.

Appendix D

- 3 -

Since my original report, informed sources tell me that people of the Human Rights have taken reports from some boys at Mount Cashel Orphanage and have taped conversations they have had with the boys. These tapes were done for the purpose of revealing the matter to the public. This information was given me by a lady who is presently very active with the Human Rights in Newfundland and she is awaiting the decision of the Justice Department on this matter.

A report of Dr. Paul Patey is attached showing results of examination of Shane Earle, whose photograph is attached.

To date I have not gone to the Mount Cashel Orphanage for the purpose of carrying out an investigation. The boys were conveyed to my office for interviewed. The straps and sticks mentioned in my report were not confiscated and this will await further instructions from Headquarters.

R. Hillier
R. HILLIER
Detective

Respectfully submitted,

C. Yetman
C. YETMAN
DETECTIVE INSPECTOR
i/c Criminal Investigation
Division.

J.F. Lawlor, Esq., J.P.,
Chief of Police.

Statement of Brenda Ann Marie Lundrigan

I am 18 years of age D.o.b. Aug 22nd, 1957 and reside at 75 St. Claire Ave with my parents. I am a first cousin to two boys who are presently residing at Mount Cashel Orphanage, namely Johnny and Jerome Williams. Both these boys has been at the orphanage for the past eight or nine years. I have been visiting these boys at the orphanage since 1970 or 1971. During the past year I haven't visited them very much, as I didn't have time. I was away for a while and also I've been working night time. About a year and a half ago I visited the Orphanage quite often and I used to go out with one of the older boys at the orphanage, namely Derrick O'Brien.

About a year and a half ago when I lived on Goodview St. I went to Mount Cashel Orphanage. This evening when at the orphanage, Johnny showed me bruises on his back, leg and along his side. There was also one or two bruises on his arm. At the time I saw the bruises they were four or five days old. I cannot remember if he told me what he was beaten with but I recall him telling me that it was Brother English who beat him. The bruises were quite noticeable and were bad bruises. A couple of days later I said something to Brother English about it. He said he didn't hit Johnny. During this time, I was attending school. The following day I stayed out of school and went to the Orphanage and took Johnny to the Child Welfare on Harvey Rd. where I reported the matter to a man who looked after the affairs at Mt Cashel. At the time, Derek O'Brien went with me to verify that what we were telling them was true. This man informed us that there was nothing he could do about it and he would have to pass it along to the head man at Confederation Building. The bruises on Johnny was shown to this man at the Child Welfare, Harvey Rd. He told us they had no control over the way in which the Brothers handle the boys.

Another time while at Mt Cashel I was going to speak to Jerome Williams. I was'nt visiting at the time but was swimming at Mt Cashel when I decided to drop along and see him. When I went in, I saw Jerome in the hallway with Brother Kenny. Jerome was crying at the time. I asked Jerome what was the matter, but he wouldn't say anything. I asked Bro Kenny what was wrong, and he said nothing was wrong. Bro Kenny then said it was none of my business what was wrong. I told him it was my business and told him I wanted to know but he wouldn't tell me. He kept Jerome from talking with me and drove him to bed. From talking with the boys at Mt Cashel I am convinced that the boys are treated bad by the Brothers. My mother, Veronica also believes the boys are treated bad. Most of my family is aware of what has been going on at Mt. Cashel. I am as well as others, aware of other things thats going on and if the Police did an investigation they would find out about it.

If anything comes up and the Police wishes a witness then I am available at any time.

Witness: Sgn. Brenda Lundrigan
R. Hillier Det.
Jan. 11th, 1976 at 12:20 PM

A. Thistle, Det.

Appendix D

Statement of Brenda Ann Marie Lundrigan

I am 18 years of age D.o.b. Aug. 22nd, 1957 and reside at 75 St. Claire Ave. Further to my previous statement I am aware of homosexual acts taking place at Mt Cashel Orphanage. I have not witnessed these things but was told by boys at Mt. Cashel. Johnny Williams, who is my first cousin and who lives at Mt. Cashel told me that he saw a fellow Jimmy whose last name I forget, with brother English. The words he used was that one night while the rest of the boys were asleep he saw Jimmy "jerking off" Brother English near his bedside.

There is also other boys involved with homosexual acts. The boys are in a position whereby there is very little they can do about whats happening but a lot of people knows about it now and something should be done to help them.

Witness:
R. Hillier Det.
Jan. 11th, 1976 at 12:20 pm

Sgn.
Brenda Lundrigan

A. Thistle Det.

Appendix D

MEDICAL REPORT

NAME: Shane Earle

Date of Birth: June 5, 1966

Date Examined: December 8, 1975

The patient was examined at the request of Mrs. Alice Winters, Child Welfare Social Worker, and the child's mother. He was examined in his mother's presence at the Janeway Children's Hospital between 7:00 & 8:00 P.M. on December 8, 1975.

Examination showed a normal co-operative, calm, nine year old boy. There were no abnormalities of the internal organs evident on examination. There was no evidence of bony injury or bony abnormality. The skin was clean. His hair was clean.

He had a 1 cm. diameter bruise on the medial aspect of the left calf. This appeared to be a week or more old.

On his buttocks there were several superficial bruises. The skin was intact. There was minimal swelling. These bruises were approximately an inch in circumference but had a linear extension from them. They were red with very slight green coloration suggesting more than one but less than five day old bruises.

There were more on the right than the left side.

These bruises could have resulted from pressure from a flexible strip of material between one and two inches in diameter; the bruises occuring when the skin was contacted by the tip and adjacent three or four inches on the strip. Six blows could have accounted for all the bruises on his buttocks. Other possible mechanisms of injury cannot be excluded.

No medical treatment was required. Spontaneous healing can be expected without leaving any permanent damage.

Paul Patey M.D.

Paul Patey, M.D.

PP/cc
cc. Mrs. Alice Winters
Child Welfare Social Worker
Det. R. Pitcher; C.I.D.

Appendix E

Commissioner's ruling delivered on November 8, 1989

Appendix E

Application by Canadian Newspapers Co. Ltd.
and the Canadian Broadcasting Corporation
for access to video and audio tapes
recording *in camera* evidence of a witness
November 8, 1989

Kenneth A. Templeton for Canadian Newspapers
Co. Ltd and
T.R. Kendell and Donna L. Strong for
Canadian Broadcasting Corporation,
applicants

John Harris, for the witness

M. Francis O'Dea, Q.C., for the
Christian Brothers of Ireland in Canada

George Horan, for the Government of
Newfoundland and Labrador

David C. Day, Q.C. for the Royal Commission

[J. Derek Green, Q.C. for Douglas Kenny
furnished submissions in writing]

THE COMMISSIONER read the following reasons:

On October 20, 1989 and after hearing statements by counsel to the commission (Mr. David Day, Q.C.,) and for a prospective witness (Mr. John Harris) I was satisfied that the evidence of the said witness should be heard *in camera* on the grounds that if it were to be received in a public hearing it would not be possible to obtain thorough, truthful and complete testimony in accordance with the express authority conferred on me in the Letters Patent establishing the commission and appointing me as commissioner. As a result the public and those members of it representing the press were excluded and the evidence was given before me, counsel for the commission and for those participants who were represented at the time. The evidence given *in camera* occupied the balance of Friday, October 20, 1989 and part of Monday, October 23, 1989.

Subsequently, the Canadian Newspapers Company Limited, publisher of the St. John's Evening Telegram and the Toronto Globe and Mail, and the Canadian Broadcasting Corporation through their solicitors advised the commission that they wished to apply for access to the tape-recording of the evidence designed to reproduce the whole transaction audibly and pictorially in combination, and constituting the transcript of the commission's proceedings on the days in question. It goes without saying that this record has not been released for public listening or viewing to anyone outside the staff of the commission.

The applicants were granted standing limited to the presentation of their arguments and October 31, 1989 was set aside for this purpose. I was furnished with photostatic copies of numerous cases dealing with freedom of the press and the necessity of proceedings in courts of law being heard in public - two principles about which there is no dispute. The lack of any case in any court dealing with the same circumstances as have here occurred convinces me that this is a case of first impression. From *Scott (otherwise Morgan) and Another v. Scott*, [1913] A.C. 417, where the House of

Lords exorcised the ghosts of the Ecclesiastical Courts and discountenanced the continuing practice of hearing *in camera* evidence of sexual incontinence and perversion, to *The Minister of National Revenue v. Coopers and Lybrand*, [1979] S.C.R. 495 where Dickson J. (as he then was) gave guidelines for the interpretation of Section 28 of the Federal Court Act (R.S.C. 1970, 2nd Supp., c.10) in respect of the distinction between judicial or quasi-judicial decisions and those of a purely administrative nature, nothing except by analogy, and far-fetched analogy at that, is apposite to the matter raised by the applicants.

In the *Scott* case it was said that the "inveterate rule" of the common law was that trials were to be held in public and that every subject of the King had access to his Courts. Commissions of inquiry constituted by Letters Patent are not courts, nor are their proceedings trials. There is no *lis*: *Re The Ontario Crime Commission, Ex parte Feeley And McDermott*, [1962] O.R. 872 (C.A.) and the adversary process is not involved: *The Minister of National Revenue v. Coopers and Lybrand, supra* at page 504. For the purpose of entertaining an application for relief under the Canadian Charter of Rights and Freedoms the commission is not a court of competent jurisdiction.

Although the principle of *stare decisis* has no application to the transactions of commissions of inquiry, much instruction can be derived from decisions and reports of commissioners who have taken the trouble to reflect upon their own process. Chief among these is, in my respectful view, the reasons of D.C. McDonald J. in *Re Commission Of Inquiry Concerning Certain Activities Of The Royal Canadian Mounted Police (1978)*, 94 D.L.R. (3d) 365 on behalf of the commissioners of that inquiry, and the report of the Honourable Mr. Justice

Mahoney on *Purchasing Procedures Of The Department Of Public Works & Services* (Newfoundland, 1981) in which the distinctions drawn above are stated and applied.

In light of the terms of reference embodied in the Letters Patent issued in Her Majesty's name by the Lieutenant Governor of the province of Newfoundland under the Great Seal of the Province on the 1st day of June, 1989, the validity of the order made by me on October 20, 1989 can hardly be gainsaid. Specifically I am charged as follows:

> AND WE DO, by these Presents, authorize you, the said Commissioner, to adopt such procedures and methods as you, the said Commissioner, may from time to time deem expedient for the proper conduct of the Inquiry, and to sit at such times and places in public forum as you may from time to time decide PROVIDED HOWEVER that express authority is hereby given to hold in camera hearings where, but only where, you deem it necessary to obtain thorough, truthful and complete testimony from witnesses.

It will be noted that the authority is express. It is not derived from custom nor is there anything inherent about it. On October 20, 1989 I listened to statements by commission counsel and by counsel for the witness proposed to be called, noted the existence of a psychological problem and the opinion of a psychiatrist and exercised my discretion according to law. Into the long line of hearings for which the utmost in publicity has been afforded, not only to listeners and viewers in Newfoundland, a day and a half of silence intervened.

I have gone thus far because, although the applicants maintain that they are now interested only in access to the record of the *in camera* hearing and the exhibits filed in the course of it, they must necessarily advance the view that the order setting it up was unlawful in order to obtain that access forthwith. But they make an alternative claim, on its face more reasonable, that the effect of the order, which amounts in practice to a ban on dissemination, be temporary and of short duration. Here I should point out that any attempt to edit the transcript by the use of pseudonyms as was approved by the British Columbia Court of Appeal in *Re Hirt and College Of Physicians and Surgeons Of British Columbia* (1985), 17 D.L.R. (4th) 472 and release it in amended form, would lead quickly to the disclosure of the identity of the witness.

A principle other than that involved in the making of the order must here be considered.

The witness whose identity and evidence has been withheld, testified, as is generally agreed, secure in the belief that the protection afforded him would be maintained and not incontinently withdrawn once the commission had received his testimony. The applicants rely on what fell from their lordships in the *Scott* case as to an order for a hearing *in camera* "not being effective to enjoin perpetual silence on all persons with regard to what took place at the hearing of the suit" as the headnote puts it or as Lord Halsbury said at page 12 of the report: "As to the injunction of perpetual secrecy there is not a fragment of authority to justify it". What was there being considered was an injunction by the trial judge in aid of this secrecy in a nullity suit and can only give comfort to those who pin their faith to judicial pronouncements taken out of context.

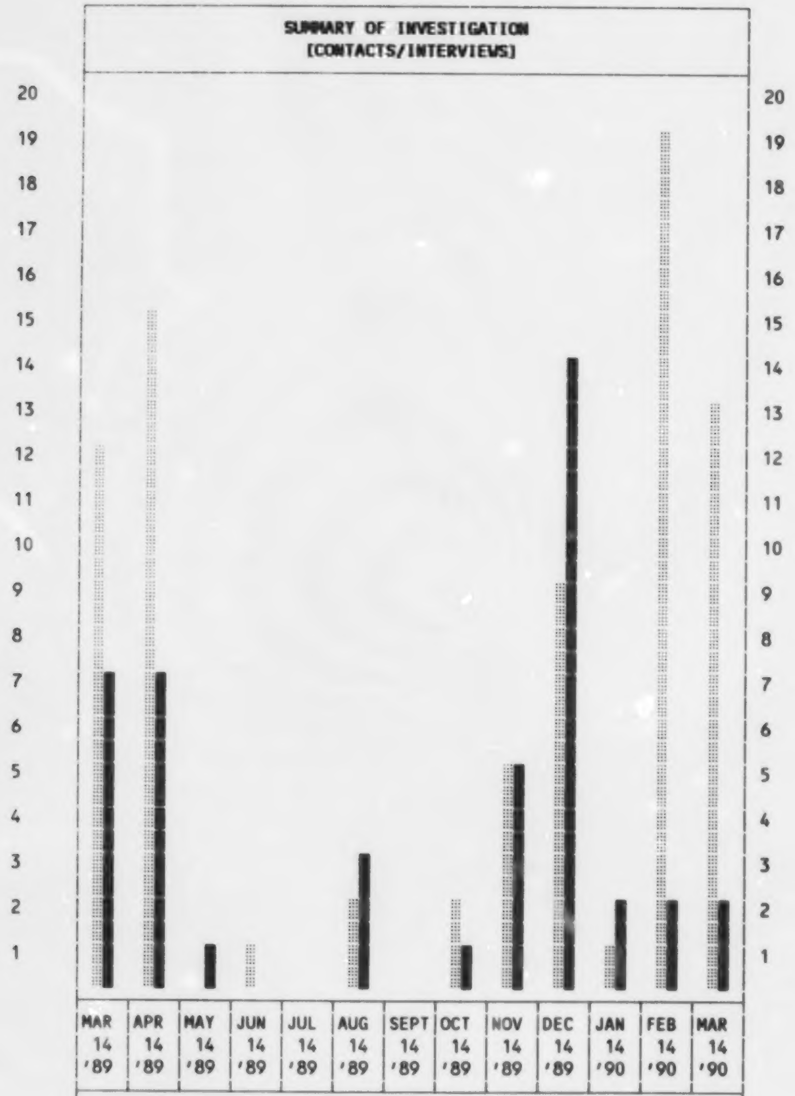
I may be forgiven for citing a recent case in which I was myself involved because it was much discussed on the argument. It is reported as *Re Canadian Newspaper (sic) Co. Ltd. and Isaac et al.* (1988), 63 O.R. (2d) 698 (Div. Ct.). Mr. Justice Campbell gave the principal judgement in the Divisional Court of Ontario in which he dealt faithfully with the claim of Mr. Kendell's client in these proceedings that the freedom of the press as guaranteed by subparagraph 2(b) of the *Canadian Charter of Rights and Freedoms* was infringed, giving his opinion that the application for a declaration to that effect because at an inquest a witness had been permitted to testify anonymously as Mr. 'X', and ancillary relief compelling disclosure of his identity, should be dismissed. Mr. Justice Austin and I agreed with our brother Campbell's reasons and the result but we would have rested our judgement solely on the grounds that, however unjustifiable was the coroner's procedure in law, requiring the name of the witness to be disclosed after his testimony had been given under a promise of anonymity would bring the administration of justice into disrepute, a view held *inter alia* by our learned brother although not relied on entirely by him in his reasons for judgement.

If in the present circumstances the freedom of the press and other media of communication was really at stake it might be necessary to try to balance its importance against the desirability of keeping faith with a witness who has testified under similar assurances, but I am not persuaded that it is. Throughout the commission's proceedings the greatest latitude has been vouchsafed to the applicants with provision for observation not ordinarily or necessarily provided, nor has there on either hand been any complaint as to what has been provided by the commission and how it has been used by the applicants. A minor exception in the case of the brief *in camera* hearing which led to these applications has provoked a reaction as sharp as to lead the Canadian Broadcasting Corporation to "demand" redress. This cannot be provided, unless circumstances change or agreement is reached, during the life of the commission. When that expires the confidentially of the evidence and the identity of the witness will rest in other hands. As matters now stand I am persuaded by counsel for the commission, the Congregation of Christian Brothers, for certain individual members of the order and for wards of the Director of Child Welfare once committed to the Director's care, as well as counsel for the Government of Newfoundland and Labrador, that the applications must be dismissed.

Completing the 1975 Mount Cashel Investigation: Efforts by Royal Newfoundland Constabulary 15 February 1989 to 14 March 1990

Appendix F

COMPLETING THE 1975 MOUNT CASHEL INVESTIGATION:
EFFORTS BY ROYAL NEWFOUNDLAND CONSTABULARY
15 FEBRUARY 1989 TO 14 MARCH 1990



CUMULATIVE SUMMARY OF INVESTIGATION
[CONTACTS/INTERVIEWS]

	MAR 14 '89	APR 14 '89	MAY 14 '89	JUN 14 '89	JUL 14 '89	AUG 14 '89	SEPT 14 '89	OCT 14 '89	NOV 14 '89	DEC 14 '89	JAN 14 '90	FEB 14 '90	MAR 14 '90
▨ CONTACTS:	12	27	--	28	--	30	--	32	37	46	47	66	79
■ INTERVIEWS:	7	14	15	--	--	18	--	19	24	38	40	42	44

Appendix G

Table of Young Persons who resided at Mount Cashel Boys' Home and Training School, St. John's, Newfoundland for part or all of December 1975

Appendix G

Table Of Young Persons Who Resided At Mount Cashel Boys' Home & Training School St. John's, Newfoundland For Part Or All Of December 1975

Name	Date & Place Of Birth	Probable Period(s) Of Residence & Legal Status At Mount Cashel	Contact(s) By R.N.C. 1975, 1989 To March 1990	Contact(s) By Commission Investigators
Baird, William Malcolm	23/11/61 St. John's, NF	08/10/75 to 06/12/75 non-ward agreement	(d.u/k)/12/75 25/04/89 29/10/89 08/01/90	25/10/89
R.2	30/09/60 Stephenville Crossing NF	08/10/75 to 26/06/78 permanent child welfare ward extended care	07/03/90	11/11/89
R.3	18/06/66 St. Lawrence, NF	14/01/75 to 02/08/76 non-ward agreement		12/11/89
Mr. "B"	17/09/63 St. Lawrence, NF	14/01/75 to 02/08/76 non-ward agreement	12/12/75 27/02/89	15/10/89
R.5	14/12/61 Burin Peninsula, NF	14/01/75 to 02/08/76 non-ward agreement	12/12/75 27/02/89	20/10/89

1. The information contained in this table has been extracted from records available to the commission up to and including March 1990.

2. Factors precluding a person's name being a matter of public record include:
   - (a) did not wish to testify,
   - (b) stated not physically or sexually abused,
   - (c) not called as a witness before the commission, or
   - (d) was an *in camera* witness.

Name	**Date & Place Of Birth**	**Probable Period(s) Of Residence & Legal Status At Mount Cashel**	**Contact(s) By R.N.C. 1975, 1989 To March 1990**	**Contact(s) By Commission Investigators**
R.6	04/05/59 St. Lawrence, NF	14/01/75 to d. u/k after 12/01/76 non-ward agreement	07/03/90	03/10/89
Brinston, Gerard Joseph	14/11/60 Burin Peninsula, NF	28/09/73 to 30/07/76 permanent child welfare ward	13/12/75 29/03/89 01/05/89 09/05/89	23/08/89
R.8	27/08/64 St. John's, NF	28/08/74 to 19/06/76 (approx.) temporary child welfare ward de facto ward permanent child welfare ward	23/01/90	14/11/89
Brown, Peter Robert	11/01/62 St. John's, NF	28/08/74 to 19/06/76 (approx.) temporary child welfare ward de facto ward permanent child welfare ward	12/12/75 21/03/89	20/10/89
R.10	25/10/61 St. John's, NF	19/03/69 to 13/04/77 non-ward agreement temporary child welfare ward de facto ward permanent child welfare ward	28/03/89 23/01/90	12/11/89
R.11	24/07/58 St. George's, NF	30/10/70 to 06/05/77 non-ward agreement extended care	08/03/90	
R.12	21/10/62 Admirals Beach, NF		09/03/90	27/11/89

Name	Date & Place Of Birth	Probable Period(s) Of Residence & Legal Status At Mount Cashel	Contact(s) By R.N.C. 1975, 1989 To March 1990	Contact(s) By Commission Investigators
R.13	06/05/64 Admirals Beach, NF		09/03/90	29/11/89
Connors, Darren Vincent	06/12/65 St. John's, NF	19/04/71 to 14/03/80 non-ward agreement	24/07/89 31/07/89	11/08/89
Connors, Gregory Patrick	26/11/64 St. John's, NF	19/04/71 to d. u/k 05/80 non-ward agreement 13/09/82 to 20/03/84 extended care	12/12/75 13/12/75 11/03/89 23/10/89 04/12/89 02/02/90	08/08/89
Connors, Robert Michael	22/10/63 St. John's, NF	19/04/71 to d. u/k 05/80 non-ward agreement 28/01/81 to d. u/k 07/73 extended care	12/12/75 13/12/75 12/03/89 02/02/90	09/08/89
R.17	14/04/64 St. John's, NF	10/10/74 to 31/10/84 permanent child welfare ward extended care	23/01/90 05/03/90	13/11/89
R.18	18/09/56 St. John's, NF	27/04/65 to d. u/k after 1975 temporary child welfare ward de facto ward permanent child welfare ward	25/10/89 05/03/90	13/11/89
Mr. "D"	22/09/64 St. John's, NF	21/02/75 to 16/06/78 non-ward agreement	15/12/75 03/04/89	31/10/89

Name	Date & Place Of Birth	Probable Period(s) Of Residence & Legal Status At Mount Cashel	Contact(s) By R.N.C. 1975, 1989 To March 1990	Contact(s) By Commission Investigators
Earle, Shane Michael	05/06/66 St. John's, NF	04/04/73 to 07/12/75 temporary child welfare ward de facto ward	08/12/75 16/02/89 03/05/89 01/09/89 03/09/89	08/10/89
		07/04/76 to d. u/k permanent child welfare ward extended care		
Earle, William Ronald	14/03/64 St. John's, NF	09/11/72 to d. u/k in 1973 temporary child welfare ward	13/12/75 20/03/89	14/09/89
		04/04/73 to 07/12/75 temporary child welfare ward de facto ward permanent child welfare ward		
		07/04/76 to d. u/k 04/77 permanent child welfare ward		
R.22	26/08/64 St. John's, NF	26/04/74 to 26/04/76 de facto ward temporary child welfare ward		08/08/89
English, Craig Edward (Mr. "E")	13/12/66 St. John's, NF	26/04/74 to 26/12/76 de facto ward temporary child welfare ward	14/12/75 07/03/90	08/06/89 11/03/90
R.24	15/03/62 St. John's, NF	26/04/74 to 26/04/76 de facto ward temporary child welfare ward	08/03/90 21/03/90	07/08/89

Name	Date & Place Of Birth	Probable Period(s) Of Residence & Legal Status At Mount Cashel	Contact(s) By R.N.C. 1975, 1989 To March 1990	Contact(s) By Commission Investigators
R.25	21/04/61 Stephenville, NF	30/05/75 to 16/06/77 non-ward agreement extended care	11/10/89 13/10/89	11/10/89
R.26	07/12/59 Stephenville, NF	30/05/75 to 08/10/76 non-ward agreement extended care	26/01/90	02/12/89
Ghaney, James Frederick	28/08/61 Colliers, NF	17/11/66 to d. u/k 04/78 permanent child welfare ward	20/03/89 31/07/89 05/12/89	09/08/89
R.28	08/12/58 St. John's, NF	01/03/71 to d. u/k after 01/01/76 non-ward agreement	23/01/90	12/11/89
R.29	11/06/64 St. John's, NF	01/03/71 to 09/12/80 non-ward agreement	23/03/89 22/01/90 ../03/90	12/11/89
R.30	21/05/63 St. John's, NF	01/03/71 to d. u/k after 15/01/78 non-ward agreement	23/03/89	24/08/89
R.31	29/10/57 St. John's, NF	01/03/71 to 27/04/76 non-ward agreement	23/01/90	12/11/89
R.32	10/08/63 Marystown, NF	04/10/74 to 28/09/77 non-ward agreement		24/11/89
R.33	06/06/66 St. John's, NF	18/11/73 to d. u/k after 31/08/77 non-ward agreement extended care	02/03/90	24/11/89

Name	Date & Place Of Birth	Probable Period(s) Of Residence & Legal Status At Mount Cashel	Contact(s) By R.N.C. 1975, 1989 To March 1990	Contact(s) By Commission Investigators
Mr. "J"	13/03/65 St. John's, NF	16/06/71 to 03/09/79 permanent child welfare ward	12/12/75	30/10/89
		20/08/81 to 30/09/82 extended care		
R.35	24/12/58 Windsor, NF	24/11/66 to 01/07/77 non-ward agreement permanent child welfare ward extended care	23/01/90	11/11/89
R.36	06/08/59 Placentia, NF	03/01/75 to 23/06/76 permanent child welfare ward	03/09/90	03/09/90
R.37	25/02/60 St. John's, NF	01/10/67 to d. u/k 08/84 non-ward agreement	14/12/75 17/02/89 21/03/89 06/04/89 04/12/89	16/10/89
R.38	14/06/58 St. John's, NF	01/10/67 to 12/02/76 non-ward agreement	23/01/90	23/11/89
Lahey, Wayne Michael	16/01/62 Placentia, NF	01/10/67 to 02/08/78 non-ward agreement	22/11/89	12/11/89
R.40	25/12/64 Stephenville Crossing, NF	21/07/75 to 30/10/81 non-ward agreement	09/03/90 13/03/90	

Name	Date & Place Of Birth	Probable Period(s) Of Residence & Legal Status At Mount Cashel	Contact(s) By R.N.C. 1975, 1989 To March 1990	Contact(s) By Commission Investigators
R.41	01/08/61 Placentia, NF	28/08/66 to 28/09/78 non-ward agreement extended care	29/10/89 23/01/90	26/10/89
Mac Isaac, John Earl	11/10/58 Heatherton, NF	27/09/65 to 16/06/76 non-ward agreement	31/05/89 23/06/89 15/09/89 20/09/89 23/11/89	09/08/89
R.43	01/02/62		08/03/90 09/03/90	
R.44	19/10/66	28/02/74 to present non-ward agreement	02/12/89	14/11/89
R.45	18/05/58 Windsor, NF	15/12/67 to 18/06/76 permanent child welfare ward extended care	26/11/89 16/12/89	24/11/89
R.46	23/05/61 Windsor, NF	15/12/67 to d. u/k 09/76 permanent child welfare ward	26/03/89	24/11/89
R.47	07/03/60 Windsor, NF	15/12/67 to 25/08/76 permanent child welfare ward	17/12/89	24/11/89
Nash, Gerald Edward	06/12/62 St. John's, NF	19/06/75 to 23/01/79 permanent child welfare ward	14/12/75 29/10/89	26/10/89

Name	Date & Place Of Birth	Probable Period(s) Of Residence & Legal Status At Mount Cashel	Contact(s) By R.N.C. 1975, 1989 To March 1990	Contact(s) By Commission Investigators
R.49	06/12/65 St. John's, NF	20/06/75 to 02/12/82 permanent child welfare ward	30/03/89	27/11/89
O'Brien, John Dereck	02/10/59 St. John's, NF	03/01/74 to 18/06/76 permanent child welfare ward	14/12/75 03/04/89 16/11/89	26/09/89
O'Brien, Ronald Patrick	09/06/61 St. John's, NF	03/01/74 to 05/08/76 permanent child welfare ward	17/11/89 19/11/89	01/10/89
O'Brien, Roy Joseph (Mr. "O")	14/02/63 St. John's, NF	04/03/74 to 18/05/78 permanent child welfare ward	13/12/75	21/11/89
		22/08/78 to 29/10/79 permanent child welfare ward		
Mr. "P"	28/08/66 St. John's, NF	d. u/k 07/72 to 15/08/81 non-ward agreement	12/12/75	03/11/89
R.54	08/10/61 Placentia, NF	20/07/72 to d. u/k after 1975 temporary child welfare ward	12/12/75	03/11/89
Preshyon, Gideon Joseph	13/02/60 Flat Bay, NF	09/03/73 to 01/06/79 permanent child welfare ward	17/11/89 19/11/89	07/11/89
Preshyon, Gregory James	05/12/61 Flat Bay, NF	03/09/73 to d. u/k in 1980 permanent child welfare ward	d. u/k 12/75 22/02/89 30/11/89	27/09/89

Name	Date & Place Of Birth	Probable Period(s) Of Residence & Legal Status At Mount Cashel	Contact(s) By R.N.C. 1975, 1989 To March 1990	Contact(s) By Commission Investigators
Pumphrey, Ian Cameron	22/05/66 St. John's, NF	25/08/75 to 24/06/77 non-ward agreement	12/12/75 30/10/89	25/10/89
Pumphrey, John Dwyer	16/09/61 St. John's, NF	25/08/75 to 22/12/77 non-ward agreement	15/12/75 12/03/89	19/10/89
R.59	14/03/59 St. John's, NF	15/08/66 to d. u/k 06/76 permanent child welfare ward	23/01/90	12/11/89
Rice, Leo Gerard	19/03/58 St. John's, NF	15/08/66 to 30/07/77 permanent child welfare ward	14/12/75 28/03/89 30/03/89 30/10/89	04/10/89
R.61	19/05/57 St. John's, NF	20/12/68 to 20/06/77 non-ward agreement	23/01/90 29/01/90	11/11/89
Mr. "R"	31/10/66 Grand Falls, NF	23/10/70 to summer of 1976 temporary child welfare ward	14/12/75 23/02/89	29/10/89
		04/05/78 to 01/03/83 non-ward agreement		
R.63	24/02/66 St. John's, NF	01/03/75 to 10/12/76 non-ward agreement permanent child welfare ward		15/11/89
R.64	19/07/68 St. John's, NF	01/03/75 to 11/02/77 permanent child welfare ward	08/02/90	15/11/89

Name	Date & Place Of Birth	Probable Period(s) Of Residence & Legal Status At Mount Cashel	Contact(s) By R.N.C. 1975, 1989 To March 1990	Contact(s) By Commission Investigators
R.65	06/12/62 St. John's, NF	01/03/75 to 11/02/77 permanent child welfare ward 20/06/77 to 30/09/84 permanent child welfare ward	23/02/90 06/03/90	15/11/89
Simms, Alvin Joseph	11/07/59 Flat Bay, NF	10/07/74 to 01/04/77 permanent child welfare ward	20/07/89 31/07/89	09/08/89
R.67	08/03/62 Flat Bay, NF	25/03/74 to 16/04/77 permanent child welfare ward	07/02/90	12/11/89
R.68	21/07/60 Flat Bay, NF	10/07/74 to 08/04/77 permanent child welfare ward	23/01/90	12/11/89
R.69	29/04/64 Flat Bay, NF	25/03/74 to 16/04/77 permanent child welfare ward	25/01/90 31/01/90 15/02/90	12/11/89
R.70	01/04/57 St. John's, NF	10/09/65 to 14/01/77 non-ward agreement	23/01/90 29/01/90	03/11/89
R.71	05/02/65 St. John's, NF	20/05/75 to 13/07/78 19/08/78 to 28/08/78	02/02/90	11/11/89
R.72	30/03/64 St. John's, NF	08/10/75 to 07/12/75 non-ward agreement	d. u/k 12/75 03/03/89 28/02/90 08/03/90	13/10/89

Name	Date & Place Of Birth	Probable Period(s) Of Residence & Legal Status At Mount Cashel	Contact(s) By R.W.C. 1975, 1989 To March 1990	Contact(s) By Commission Investigators
Strickland, (Baird) Francis Patrick	30/03/65 St. John's, NF	07/10/75 to 04 or 06/12/75 non-ward agreement	d. u/k 12/75 07/03/89 08/02/90	06/11/89
Tobin, Derek George	22/09/63 Fleur de Lys, NF	19/04/75 to 17/06/76 temporary delinquent ward non-ward agreement	27/11/89 04/01/90	26/11/89
Tobin, James Robert	25/01/59 St. John's, NF	06/02/66 to 27/06/78 non-ward agreement temporary child welfare ward	09/03/90	08/11/89
R.76	25/03/58 St. John's, NF	15/03/72 to 18/06/76 permanent child welfare ward	23/01/90	23/11/89
R.77	09/01/58 St. John's, NF	06/02/66 to 23/06/76 non-ward agreement	09/03/90	08/11/89
R.78	26/09/68 St. John's, NF	07/09/74 to 30/09/89 non-ward agreement	27/11/89 03/01/90 17/02/90	22/11/89
R.79	26/09/68 St. John's, NF	07/09/74 to 01/07/88 non-ward agreement	30/01/90 06/02/90	22/11/89
Walsh, Andre Joseph	26/10/61 St. Lawrence, NF	05/11/68 to d. u/k after 09/77 permanent child welfare ward	14/12/75 27/03/89 23/10/89 08/01/90 09/01/90	07/08/89

Name	Date & Place Of Birth	Probable Period(s) Of Residence & Legal Status At Mount Cashel	Contact(s) By R.N.C. 1975, 1989 To March 1990	Contact(s) By Commission Investigators
R.81	13/11/57 St. Lawrence, NF	05/11/68 to d. u/k after 1975 permanent child welfare ward	23/01/90	13/11/89
R.82	04/08/66 St. Lawrence, NF	24/09/71 to 31/08/82 permanent child welfare ward		15/11/89
R.83	13/07/60 St. Lawrence, NF	05/11/68 to d. u/k after 1975 permanent child welfare ward	21/11/89 25/11/89	19/11/89
R.84	23/06/60 Stephenville Crossing, NF	11/09/73 to d. u/k in 1976 non-ward agreement	20/03/89	14/11/89
R.85	25/02/61 St. Lawrence, NF	24/09/71 to 31/08/77 permanent child welfare ward		14/11/89
R.86	29/06/65 St. Lawrence, NF	24/09/71 to 28/10/88 permanent child welfare ward		14/11/89
R.87	12/11/61 Stephenville Crossing, NF	11/09/73 to d. u/k in 1976 non-ward agreement	30/01/90	15/11/89
R.88	15/10/61	10/04/75 to 08/07/77 permanent child welfare ward		
R.89	d. u/k 09/58			

Name	**Date & Place Of Birth**	**Probable Period(s) Of Residence & Legal Status At Mount Cashel**	**Contact(s) By R.N.C. 1975, 1989 To March 1990**	**Contact(s) By Commission Investigators**
Williams, John Cyril	03/09/60 Placentia, NF	11/12/67 to 15/12/77 non-ward agreement	15/12/75 17/02/89 03/04/89 07/12/89	11/09/89 19/10/89
R.91	03/09/60 Placentia, NF	11/12/67 to d. u/k after 07/04/78 non-ward agreement	07/03/90	

Commissioner's ruling delivered on June 1, 1990

Appendix H

Application by Sergeant Douglas Hamlyn,
R.C.M. Police, for the re-attendance of
himself and Superintendent Emerson Kaiser,
R.C.M. Police to testify before the Royal
Commission
June 1, 1990

Robert Regular, for the applicant

Keith Rose, for the R.C.M. Police

George Horan for the Government of
Newfoundland and Labrador

Clay M. Powell, Q.C. for the Royal
Commission

THE COMMISSIONER (orally):

The issue which I propose to deal with this morning was derived from representations made by Mr. Regular on behalf of Sergeant Hamlyn. It will be recalled that Sergeant Hamlyn gave evidence here in connection with "Child Welfare/Criminal Investigation Profile No. 13, 1986 To 1990", dealing, in fact, with one aspect of the early life of the last witness before us this morning whose concerns as a foster-child had been reported by Social Services to the Holyrood detachment of the Royal Canadian Mounted Police on 29 July 1988. Sergeant Hamlyn was preceded as a witness by Superintendent Kaiser, called by Ms. Sandra Burke, assistant counsel to the commission, and he gave evidence generally about a bulletin in relation to the Operational Manual of the R.C.M. Police, which is in evidence as exhibit C-0479, that deals with the classification of offences, or alleged offences, including that described in the bulletin as

> high profile case where professional person commits sexual assault i.e. doctor, clergy, dentist, school teacher, custodian(s) of foster home or day care centre, etc.

Then, I think I am right, the evidence that he gave had nothing to do with profile no. 13. After Sergeant Hamlyn had testified as to how the investigation described in profile no. 13 was handled by the Holyrood detachment of which he was in charge, Superintendent Kaiser came back to the commission and, dealing specifically with this investigation, he said it was his absolute opinion that the wrong decision had been made and that decisive steps in the form of apprehension and charge should have been taken at the time when - on 29 July 1988 -the complaint had been made, or shortly after. Now, it is understandable, I suppose, that with this evident difference of opinion or be it, perhaps, deriving more substance because the disagreement is being expressed by a senior officer in relation to the activities of an investigation by an officer junior to him, Sergeant Hamlyn, on the application of his counsel, Mr. Regular, wants to give further testimony. I am not sure that Corporal Raymond Wayne Griffith is associated with this, is he?

MR. POWELL:
No he is not, Mr. Commissioner.

THE COMMISSIONER:

No. In order to explain or explore and explain the difference of opinion with a view, as far as I can make out, to persuading me that he was right and that Superintendent Kaiser is wrong in the opinion that he currently expresses I think I should point out that all of this happened a year and a half ago, almost two years ago, and I therefore declined to deal with the matter of this application yesterday. At once I wanted to look at my notes of the evidence and the documents which are contained in exhibit "RR". Perhaps I should translate that into the unedited version for the benefit of the record.

MR. VIVIAN:

Exhibit 474, Mr. Commissioner.

THE COMMISSIONER:

Thank you Executive Secretary. Exhibit C-0474. The immediate cause of Mr. Regular's application is the realization that a document was not included in exhibit C-0474 and it is maintained that this document, which has since been received in evidence as exhibit "RR1" in unedited form, exhibit C-0474A in edited form, is of significance and would tend to explain and perhaps justify the actions of the Holyrood detachment which dealt with the complaint.

The first document that I want to refer to is at page 66 of exhibit C-0474. That is the report by Sergeant Hamlyn from the Holyrood detachment, sent by telex, I believe, as to a complaint by a social worker of the Department of Social Services made to the R.C.M. Police on 29 July 1988 based upon information given some two years before, originally to a nurse in the Janeway Hospital, in connection with sexual abuse at a foster-home. This telex report, directed to the Officer-In-Charge of Criminal Operations for St. John's Subdivision of "B" Division, dated the 17th of August 1988, outlined the complaint, and said as follows: "A statement was provided to this office on 88-08-17" - August 17th, 1988 - "concerning the allegation" and then, after identifying the alleged offender, proceeds: "Matter is presently being investigated and suspect will be interviewed." Sergeant Hamlyn's communication to the Officer-In-Charge of Criminal Operations at the St. John's Subdivision concluded: "Incident reported to Division HQ as per requirement of B Div OM Bulletin OM333. Possible high profile case involving foster-parent. Please advise if further report required." Now that communication was dated August 17th, 1988, the day the complainant who had previously resided at the foster-home was interviewed in relation to the complaint reported by a social worker to the R.C.M. Police on 29 July 1988.

MR. POWELL:

Mr. Commissioner, that telex might have been August 30th. The date is somewhat obscured.

THE COMMISSIONER:

Well, that is right. That is the one in the margin is it? I agonized over that date. August 30th, right.

So then we have the document which I have referred to as exhibit "RR1" which is the Transmittal & Diary Date Request from Criminal Operations, B Division, and it has been agreed that it was dated September 2nd, 1988 and reached the Holyrood detachment on September 6th, 1988. It reads - and indeed it originated with a reader who is an officer who peruses files and assigns extension and diary dates if he thinks the request is justified - "No further reporting required here, at this time". Now, by the time it reached the detachment the investigating officer, Constable Griffith, had arranged to interview the suspect, a foster-father, who was to come in on the following day, September 7, 1988, with his wife to detachment headquarters for that purpose. In fact, on that following day he left the house and was followed by a foster-child who was then in residence at his house, and what happened subsequently is well known and resulted in the apparent suicide, officially the suicide, of that foster-child, and the arrest of the foster-father.

Now, Mr. Powell I must get this date right. At page 77 of exhibit C-0474, inquiries emanated, not from the complaint of the foster-child regarding the foster-home arising two years before and complained of by a social worker on 29 July 1988, perhaps as much as from the death on September 7, 1988 of the foster-child who was then residing in the same foster-home, which I have referred to.

MR. POWELL:

Yes Mr. Commissioner, I believe the telex at page 77 is responding to the telex at page 76 of Superintendent Kaiser.

THE COMMISSIONER:

Yes, you are quite right. It is the one I have tabbed. I have turned over two pages. A telex at page 76, dated 09 September 1988 from the Acting Officer-In-Charge of Criminal Operations in "B" Division raises questions as to the complaint originating at the Janeway Hospital and being dealt with on the basis of the statement taken from the complainant on the 17th of August, 1988; points out that while the complaint had originally been received at the Holyrood detachment on July 29th, 1988 the interview was undertaken on August 17th, 1988, and says: " ... due to some complications the victim was not interviewed until 88.08.17" - that statement relating to the complaint received on July 29th, 1988 - and then refers to the Holyrood detachment's report in the following words: " ... it would appear that" - the foster-father is here named - "was not approached until 88.09.06 at which time he declined to be interviewed as he wished to consult legal counsel" and then the telex proceeds: "Given the date of the original complaint, the profile of sexual abuse investigations and the fact that you were aware that a foster-home was involved could you advise reasons for delay from date of statement until" - here again the foster-father is named - "was approached. Secondly could you elaborate reason why" - here again the foster-father is named -"not arrested on 88.09.06". The next sentence says: "I am not suggesting he should or should not have been; simply wish to know your rationale for briefing purposes." This telex message proceeds from the Acting Officer-In-Charge of the Criminal Operations in the St. John's Subdivision. The rest of the memorandum deals with the events of September 7th, 1988 involving the death of the foster-child who had then been living in the foster-home.

I have already expressed, I think, my disinclination to have this commission become a stage for the resolution of an internal dispute among officers of the Royal Canadian Mounted Police and, given the circumstances and great publicity which the process here ensures, I am still less inclined to do so unless there are compelling reasons. It seems to me, in just dealing with the documents, that R.C.M. Police Headquarters was assured that the suspect would be interviewed and on the basis of that assurance I think that the document which we received in evidence as exhibit "RR1" dated 02 September 1988 is of no particular help; certainly not to me. It does not say "no further action required"; it says "No further reporting required" and it can only be understood in terms of the assurance given by the Holyrood detachment that the suspect would be interviewed. Subsequent inquiries, reflected in the telex communication from Criminal Operations to the detachment dated 09 September 1988, arise naturally, without any reversal it seems of opinion - I won't say policy - at Criminal Operations and do not represent any change of what would be the normal position.

First of all there is an assurance given that there would be an interview and then it turned out that the interview, as contemplated, was never given and naturally provoked a request. Of significance, of course, are the other words proceeding from the acting officer-in-charge in his memorandum dated 9 September 1988: "I am not suggesting he should or should not have been; simply wish to know your rationale for briefing purposes." Now, I have heard two officers of the then Holyrood detachment - Sergeant Hamlyn and Corporal Griffith - give their evidence, and I have heard Superintendent Kaiser give his, and the fact that the superintendent now feels that what transpired at the Holyrood detachment and under the control of the detachment was not the proper course does not help me in my understanding of the facts of the investigation of 1988. For that reason alone I am disinclined to hear any more evidence on the point. Well, perhaps, I should not say that. If there was some evidence other than the reader's memorandum of September 2nd, 1988 I might have to reconsider. But just to hear a further expression of opinion based on the documents and the recollection available, as disclosed by the evidence in this matter thus far, advances my purpose not at all.

And the second reason is that although Mr. Regular assures me that this is not a matter where discipline is involved, I certainly have not received any assurance on that point from Mr. Rose, although he may well agree as to the current situation. But I am reasonably certain that if these officers return to give evidence, and they can only return voluntarily, but if they return and thrash the matter out again before this commission, it may very well become a matter of internal discipline in the force and it is idle to say that because it was not a matter of internal discipline I had jurisdiction to deal with the matter, and after it becomes one of discipline, then our position will be a false one and indeed forbidden by the highest court without any possibility of doubt. As to an individual offence and an investigation by the R.C.M. Police pursuant to their contract with the Government of Newfoundland and Labrador, I am satisfied that this commission has jurisdiction to receive evidence to the facts and even as to the opinions as far as we have gone. But in the case of an open conflict between officers not of the same level of seniority I might reasonably expect that it would become a matter of discipline and, therefore, I am impressed with the necessity of refusing Mr. Regular's application.

At the same time, I am sure he was justified in making it and I am sure Mr. Powell acted properly in dealing with the fact that the record was incomplete to the extent of overlooking the reader's memorandum. By the way, the receipt of the reader's memorandum was too late for any effect that it could possibly have had on the procedure of the investigation. It merely expresses the opinion of someone who was in the fortunate or unfortunate position of ruminating over someone else's work and really is of very little significance.

Appendix J

Summary of child welfare profiles
prepared by
David C. Day, Q.C.
Commission Co-Counsel

Appendix J

Glossary

The summaries of profiles employ the following compendiums:

application	application to a Judge or Justice under The Child Welfare Act, 1972 for a judicial investigation and an Order committing a child either temporarily or permanently to the Director's care and custody or making the child subject to the Director's supervision;
child in need of protection	term describing, from 14 July 1981, a child whose welfare requires state intervention under The Child Welfare Act, 1972;
Child Welfare Act, 1972, The	the principal child welfare statute of the Province of Newfoundland, The Child Welfare Act, 1972, S.N. 1972, c. 37 replaced The Child Welfare Act, R.S.N. 1970, c. 37 that, in turn, was a consolidation of The Child Welfare Act, 1964, S.N. 1964, No. 45 and its amendments;

committed to the Director as a child whose custodian is charged/is committed for trial/is bound over to keep the peace towards the child	result of an Order of committal of a child to the care of the Director of Child Welfare under section 35 of The Child Welfare Act, 1972 to age 17 years or an earlier age;
committed to the Director's supervision as a juvenile delinquent	result of an Order of committal of a person under age 17 years, following conviction on a charge of delinquency to the care and custody of the Director of Child Welfare either temporarily or permanently (to age 17 years) under section 20 of The Welfare of Children Act;
committed to the Director as a neglected child/as a child in need of protection	result of an Order of committal, following a judicial investigation, to the care and custody of the Director of Child Welfare under section 15 of The Child Welfare Act, 1972, either temporarily (for periods not exceeding 12 months each, to a maximum of 36 months), or permanently (to age 16 years);
Constabulary	The Constabulary Force of Newfoundland, to 04 December 1981;

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	The Royal Newfoundland Constabulary, from 04 December 1981;
Court of Appeal	established as part of the Supreme Court of Newfoundland on 25 July 1975;
Director	Director of Child Welfare, Department of Social Services (and predecessor departments);
Director's headquarters representative	social worker employed by the Department of Social Services at departmental headquarters, usually located at Confederation Building, St. John's;
Director's District representative	social worker employed by the Department of Social Services in a District;
District	District office of the Department of Social Services;
District social worker	social worker employed by the Department of Social Services in a District;

foster home	regular foster home for a child or children operated by a person(s) licensed by the state for that purpose;
Health	Department of Health at departmental headquarters, usually located at Confederation Building, St. John's;
inquiry	magisterial enquiry conducted under authority of The Summary Jurisdiction Act, from 31 March 1949 to 03 November 1980;
	judicial inquiry conducted under authority of The Summary Proceedings Act, from 03 November 1980;
Inquiry	The Royal Commission Of Inquiry into The Response Of The Newfoundland Criminal Justice System to Complaints (although the statute establishing the Inquiry is entitled The Public Enquiries Act);
Janeway	Dr. Charles A. Janeway Child Health Centre, St. John's;
Judge	Magistrate, to 14 December 1979;
	Provincial Court Judge, from 14 December 1979;

Justice	Department of Justice at departmental headquarters, usually located at Confederation Building, St. John's; or Judge of the Court of Appeal, Trial Division or Unified Family Court of the Supreme Court of Newfoundland;
Justice solicitor	solicitor employed by Department of Justice at departmental headquarters, usually located at Confederation Building, St. John's;
made subject to the Director's supervision as a juvenile delinquent	result of an Order requiring a child to be returned to his/her parents or guardians or to another person(s) under The Welfare of Children Act subject to the Director's supervision under section 20 of the Act either temporarily (no maximum period expressed in the Act) or permanently (to age 17 years);
made subject to the Director's supervision as a neglected child/	result of an Order requiring a child to be returned to his/her parents or guardians or to another person(s)

as a child in need of protection	subject to the Director's supervision under section 15 of The Child Welfare Act, 1972 either temporarily (no maximum period expressed in the Act) or permanently (to age 16 years);
Mount Cashel	Mount Cashel Orphanage, from 1898 to about 29 December 1969; Mount Cashel Boys' Home and Training School, from about 29 December 1969 to 30 June 1990;
neglected child	term describing, to 14 July 1981, a child whose welfare required state intervention under The Child Welfare Act, 1972 and its predecessor, The Child Welfare Act, 1964;
Provincial Court	Magistrate's Court, to 15 July 1974; Provincial Court, from 15 July 1974;
R.C.M.P.	Royal Canadian Mounted Police, "B" Division, Newfoundland;

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School of Social Work	Memorial University of Newfoundland, St. John's Campus;
Social Services	Department of Public Welfare, from 28 July 1949 to 07 July 1970; Department of Social Services and Rehabilitation, from 07 July 1970 to 01 April 1973; Department of Social Services, from 01 April 1973;
social worker	welfare officer, from 30 December 1944 to 20 December 1974; social worker, from 20 December 1974;
St. John's Family Court	Court established under The Family Court Act which was authorized to sit on cases involving some family matters from St. John's and area from 22 June 1951 until replaced by Unified Family Court on 18 June 1979, and authorized to sit on juvenile delinquency prosecutions from St. John's and area from 22 June 1951 to 02 April 1984. The only family court established under the Act was at St. John's;

Trial Division	established as part of the Supreme Court of Newfoundland on 25 July 1975;
Unified Family Court	part of the Supreme Court of Newfoundland, established on 18 June 1979, whose jurisdiction includes the limited number of family law matters that, until then, had been heard by the Judge of the St. John's Family Court (but not juvenile delinquency prosecutions) and, in addition, most other family law matters. The Court serves St. John's and a larger area surrounding St. John's than the St. John's Family Court had served. (Note: Outside St. John's and area, family law matters are now heard by the Trial Division of the Supreme Court and by the Provincial Court);
Welfare of Children Act, The	formerly Part II of R.S.N. 1952, c.60 and Part I of R.S.N. 1970, c.190, this was the juvenile delinquency statute of the Province of Newfoundland and was repealed 02 April 1984 with the coming into force on that date of the federal Young Offenders Act.

Appendix J

PROFILE CATEGORY: Child Welfare

PROFILE NUMBER: 01

PROFILE TITLE: The Shane Earle Wardship Proceeding, St. John's, 1976

PROFILE EXHIBITS: C-0281A C-0281B

PRINCIPAL RELATED EXHIBITS: C-0037 C-0039

C-0040 C-0041

C-0066 C-0238

Memorandum Of Evidence [10] (dated 30 September 1990)

Memorandum Of Evidence [49] (dated 30 September 1990)

RESPONDENTS TO COMPLAINTS EXAMINED: Social Services

Justice

Child Welfare Profile Number 01

SUMMARY:

An Order made 18 March 1976 by the Family Court Judge committed a boy (born 05 June 1966) permanently, as a neglected child, to the Director whose District representative, with the consent of the boy's mother, placed the boy on 07 April 1976 at Mount Cashel where he resided until 10 September 1987.

The boy's previous departure from Mount Cashel, on 07 December 1975, contributed to commencement next day of the 1975 Mount Cashel investigation by the Constabulary.

Appendix J

PROFILE CATEGORY: Child Welfare

PROFILE NUMBER: 02

PROFILE TITLE: The Francis Strickland
Wardship Proceeding,
St. John's, 1976

PROFILE EXHIBITS: C-0288 C-0288A

C-0288B

PRINCIPAL
RELATED EXHIBITS: C-0115 C-0116

C-0116A C-0284

C-0292

Memorandum Of Evidence [49]
(dated 30 September 1990)

RESPONDENTS TO
COMPLAINTS EXAMINED: Social Services

Justice

Child Welfare Profile Number 2

SUMMARY:

A boy (born 30 March 1965) was apprehended by a St. John's District social worker at the Janeway on 17 March 1976, 17 days after his admission there. The application for his temporary committal to the Director as a neglected child was, on 08 July 1976, denied by the Family Court Judge.

While awaiting hearing of the application, the boy's mother alleged in April 1976 to the social worker who apprehended her son and in June 1976 to a psychiatrist who examined both mother and son that while he lived at Mount Cashel for part of the fourth quarter of 1975 he and his two brothers there and then living with him had been physically and sexually abused. No evidence was located of any response (regarding these allegations) by Social Services or Justice, to both of which the allegations had been communicated by June 1976.

Appendix J

PROFILE CATEGORY: Child Welfare

PROFILE NUMBER: 03

PROFILE TITLE: Complaints From Mount Cashel Residents, St. John's, 1982

PROFILE EXHIBITS: C-0294 (unedited Exhibit S) including, at pages 34 to 36 of both,

unedited Exhibit P

C-0294A C-0294B

C-0294C C-0294D

PRINCIPAL RELATED EXHIBITS: C-0201 C-0202

C-0203 C-0204

C-0204A C-0205

C-0206 C-0207

C-0208 C-0209

C-0210 C-0237

PRINCIPAL RELATED EXHIBITS:	C-0276	C-0277
	C-0280	C-0330
	C-0348	
RESPONDENTS TO COMPLAINTS EXAMINED:	Social Services	
	Constabulary	
	Justice	

Appendix J

Child Welfare Profile Number 3

SUMMARY:

In response to complaints in 1982 from a number of young persons residing at, or recently departed from, Mount Cashel, made to a civilian, a District social worker and the Mount Cashel superintendent, investigations were undertaken by the Constabulary, the Bell Island and St. John's East Districts and Social Services which produced 12 written reports collectively alleging that from 1976 to and including 1982 a total of 19 young persons and two adults (one civilian and one Christian Brother) - most of whom were residing at Mount Cashel in 1982 - had participated in or witnessed or otherwise knew about sexual activity among young persons at Mount Cashel.

The investigations resulted in one criminal charge covering several indecent acts by the Christian Brother with a 15-year-old male resident at Mount Cashel over a period of approximately one year. On 19 November 1982 the Christian Brother plead guilty to and was convicted of the charge for which he was sentenced to serve four months' imprisonment and made subject to the conditions of a probation Order for three years. On 01 December 1982 the Court of Appeal varied his imprisonment to time served and the conditions of his probation to require his submission to "such psychiatric and other rehabilitative measures as deemed necessary by the Brother Provincial in the Order of Christian Brothers."

Of the 19 young persons involved in or informed about the sexual activity, one of them who had recently departed Mount Cashel was not required to return; two were returned to their father; and one was placed in another foster environment. There was no other response by Social Services or Justice, to both of which all 12 investigative reports were sent in timely manner.

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PROFILE CATEGORY:	Child Welfare	
PROFILE NUMBER:	04	
PROFILE TITLE:	Alonzo Corcoran Marystown/Whitbourne	
PROFILE EXHIBITS:	C-0358	C-0358A
PRINCIPAL RELATED EXHIBITS:	C-0354	C-0363
	C-0356	C-0364
	C-0357	C-0365
	C-0359	C-0366
	C-0360	C-0367
	C-0361	C-0368
	C-0362	C-0368A
RESPONDENTS TO COMPLAINTS EXAMINED:	Social Services	
	Provincial Court	

Child Welfare Profile Number 4

SUMMARY:

Thirteen days after his placement, on 10 January 1984, in the Home for Boys at Whitbourne, Newfoundland by a District social worker, a boy (permanently committed to the Director on 01 January 1984 as a juvenile delinquent; that is, to his 17th birthday on 04 February 1984), eloped from the Home. Some 23 hours later - at about 10:00 a.m. on 24 January 1984 - after a search by two School staff had been abandoned, the boy was found by a railway employee, dead due to hypothermia, three and a half miles east of Whitbourne beside a railway track.

Among the findings of a judicial inquiry by a Judge sitting at Whitbourne over five days in May, June, August and October 1984, were the following: although the two Home staff who undertook the search for the boy could not personally be faulted given the guidelines under which they were required to operate, not enough was expected of them; the resulting search by the Home staff was inadequate; the Home was uncertain as to the role of its staff in relation to the police when a boy eloped, and the Home had never adequately addressed the question of safety, generally, of eloping boys.

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PROFILE CATEGORY:	Child Welfare	
PROFILE NUMBER:	05	
PROFILE TITLE:	Temporary/Permanent Wardship Proceedings Gander, St. John's, 1972 To 1978	
PROFILE EXHIBITS:	C-0422 (unedited Exhibit W)	
PRINCIPAL RELATED EXHIBITS:	C-0417	C-0418
	C-0419	C-0420
	C-0444	
RESPONDENTS TO COMPLAINTS EXAMINED:	Social Services	
	Justice	

Child Welfare Profile Number 5

SUMMARY:

Born in Nova Scotia on 23 January 1972 to a spinster mother, a male child was taken in April 1972 by his mother and her future husband (whom she met in October 1971 while carrying the child) to Newfoundland where they married on 28 June 1972. On 29 November 1972 at Central Newfoundland Hospital, Grand Falls the child presented with 19 separate fractures and other injuries for which he was admitted and treated at the Hospital, next at the Janeway, and again at the Hospital upon discharge from which on 16 February 1973 he was apprehended by a District social worker.

The application of the Director, whose representative was not legally trained, for temporary committal of the boy to him was opposed by the boy's mother and dismissed by a Judge sitting at Gander on 16 March 1963. The boy was then returned to his mother. The Director's appeal from the Judge's dismissal was allowed on 22 June 1973 by the Newfoundland Supreme Court which temporarily committed the boy as a neglected child to the Director for six months.

As a result of a succession of subsequent Orders by the Judge at Gander, the boy remained in the Director's care and custody: temporarily until 11 October 1974 and permanently from that date. In 1978, the boy was adopted in Alberta.

No request was made to the R.C.M.P., the responsible police force, to conduct a criminal investigation into the circumstances of the boy's injuries.

Appendix J

PROFILE CATEGORY: Child Welfare

PROFILE NUMBER: 06

PROFILE TITLE: Foster Home Care,
Mount Pearl, 1965 To 1975

PROFILE EXHIBITS: C-0447 (unedited Exhibit Y)

PRINCIPAL RELATED
EXHIBITS:

C-0070
C-0121
C-0121A
C-0145
C-0145A
C-0437 (unedited Exhibit X)
C-0438
C-0445
C-0481 (unedited Exhibit SS)

RESPONDENTS TO
COMPLAINTS EXAMINED: Social Services

Child Welfare Profile Number 6

SUMMARY:

A married couple living at Mount Pearl, Newfoundland with their legally-adopted grandson (whose spinster mother was their sole offspring) was licensed to operate a regular foster home: for a maximum of two children, on 26 March 1965; four children on 21 July 1967, and six children on 27 October 1969, although there were occasions subsequently when as many as 12 children committed to the Director or under his supervision were living there. Reports from 12 June 1967 to 20 July 1973 by St. John's District social workers described the home as providing satisfactory foster care. The couple had accommodated a total of 46 children, 35 of them boys, during the nine years and 11 months licensed for foster care when, on 26 February 1975, the last foster child was removed. The decision was by then made by Social Services to discontinue placing children there because of accumulating reservations of a St. John's District social worker employed in her first District position since April 1973 who had begun carrying a child welfare caseload in December 1973.

Three of the foster children were brothers who lived there together from 23 June 1965 to 31 July 1969 and the youngest of whom (born 14 February 1963) continued to live there until 06 July 1972 and again from 02 March 1973 to 10 October 1973. The two older brothers (born 02 October 1959 and 09 June 1961) complained of being severely physically and emotionally mistreated by the couple - particularly the wife - while they resided there. They made the complaints during a meeting in April 1973 with a rural District social worker who summarized the complaints in a report she prepared to Social Services regarding the suitability of the two older boys for adoption (which did not materialize). The complaints were never acted upon by Social Services or communicated to the R.C.M.P., the responsible police force, for criminal investigation.

PROFILE CATEGORY: Child Welfare

PROFILE NUMBER: 07

PROFILE TITLE: Guardianship Proceedings: Punctuality, 1980 To 1982

PROFILE EXHIBITS: C-0471 (unedited Exhibit PP)

PRINCIPAL RELATED EXHIBITS: None

RESPONDENTS TO COMPLAINTS EXAMINED: Social Services

CROSS REFERENCES: Child Welfare Profile Number 08

Appendix J

Child Welfare Profile Number 7

SUMMARY:

Six siblings - three of them sisters - were apprehended on 13 March 1980 from their parents in a rural community in central Newfoundland by a District social worker and committed to the Director temporarily or made subject to his supervision as neglected children until 22 January 1982 by a series of Orders of a Judge. During this 20-month period the Director's District representatives ensured that on the seven occasions required the initial Orders temporarily committing the six children to the Director were punctually renewed or replaced (that is, prior to the previous Orders expiring); punctuality infrequently evident in Social Services and District child welfare files opened from 1965 to 1990 that the Commission examined.

Appendix J

PROFILE CATEGORY:	Child Welfare
PROFILE NUMBER:	08
PROFILE TITLE:	[1980 - 1981]
PROFILE EXHIBITS:	C-0457 (unedited Exhibit BB)
PRINCIPAL RELATED EXHIBITS:	None
RESPONDENTS TO COMPLAINTS EXAMINED:	Social Services R.C.M.P.
CROSS REFERENCES:	Child Welfare Profile Number 07

Appendix J

Child Welfare Profile Number 8

SUMMARY:

Because of recurring mental illness, a spinster mother (born to parents aged 60 and 67 years) was unable to parent her three children; a son born in 1974 and daughters born in 1980 and 1981. By arrangement of the Director's representatives the son went to live with his maternal grandmother and the daughters were eventually adopted by two other families.

The Director's representatives ensured the judicial Orders of the Unified Family Court Justice committing the daughters temporarily to the Director as children in need of protection were punctually renewed by the Justice as required until the daughters were permanently committed to the Director and adopted.

PROFILE CATEGORY: Child Welfare

PROFILE NUMBER: 09

PROFILE TITLE: [1972 - 1989]

PROFILE EXHIBITS: C-0458 (unedited Exhibit CC)

C-0458A C-0458B

PRINCIPAL RELATED EXHIBITS: None

RESPONDENTS TO COMPLAINTS EXAMINED: Social Services

CROSS REFERENCES: Child Welfare Profile Number 16

Appendix J

Child Welfare Profile Number 9

SUMMARY:

Due to their parents' chronic personal problems, two children, both boys, received frequent state attention from their respective birth dates (1972 and 1973) until 1989.

The mother required at least three admissions to a mental health facility (in 1972, 1974 and 1976). The father was once convicted of and served an imprisonment sentence for the criminal offence of sexual assault on a young girl (1986), and was accused by the mother of physically abusing her. Family shelter and nutrition were inadequate. Like the parents, the older child was emotionally unstable; having contemplated suicide (1986) and alleged physical mistreatment of him in a foster home where he was subsequently placed. Parental supervision of both boys was sometimes delegated to relatives and on other occasions was entirely overlooked.

In response the Director and his District representatives made non-ward agreements with one or another of the parents (1972, 1974); convinced the parents to place the younger boy in day care so that he could be closely supervised (1979); referred the mother to a family crisis centre (1979); obtained Orders temporarily committing both boys to the Director as children in need of protection (commencing in 1981) or authorizing their supervision by the Director while they resided in their own home (commencing 1983); apparently made a contract with the mother (and, perhaps, the father) intended to improve the parents' health, behaviour, and parenting of their two boys.

There is no indication of responses by or on behalf of the Director to concerns the boys' school guidance counsellor said he expressed to the Director about the family in 1979 or to concerns from a faculty member of the School of Social Work in 1981 about the School's social work students being assigned, during field placements in the responsible District, to deal with this multi-problem family.

A perennial difficulty of the Director and his representatives in formulating responses to concerns regarding parental care of the two boys (by no means peculiar to this matter or to the Province of Newfoundland) is stated in a letter dated 04 May 1981 from a District social worker who dealt with the family:

> we have a case where there are several problem areas and yet we have nothing definite that we could use in court. Even at present, with the children in care, we will have difficulty in obtaining sufficient evidence to warrant keeping the children in care. We can't prove there are family and marital problems or psychiatric problems and even though ... [the mother] shared a lot of her problems with us when she placed the boys in care, she is now denying them all.

Appendix J

PROFILE CATEGORY: Child Welfare

PROFILE NUMBER: 10

PROFILE TITLE: [1976 - 1989]

SUMMARY:

PROFILE EXHIBITS: C-0459 (unedited Exhibit DD)

PRINCIPAL RELATED EXHIBITS: None

RESPONDENTS TO COMPLAINTS EXAMINED: Social Services

Child Welfare Profile Number 10

SUMMARY:

A rural District, becoming concerned about the quality of care provided by a widowed father to his son (born 1965) and daughter (born 1969), sought direction in April 1976 from the Director who referred the District for advice to its Regional Office; a course of action the District does not appear to have adopted. In May 1976 both children were apprehended by a District social worker and on 25 May 1976 committed temporarily - for one year - to the Director as neglected children, with the father's consent, by a Judge at Baie Verte, Newfoundland. On 21 June 1976 the Director's District representative placed the son in Mount Cashel and the daughter with relatives.

During the next 11 months, the Director's District representative prepared and sent the Director two progress reports on the daughter. No progress reports were prepared regarding the son by the Director's District representatives or by Mount Cashel staff.

On 16 May 1977 the Judge committed both son and daughter permanently (that is, to age 16 years) to the Director. Both children continued to live in the Director's extended care (that is, beyond age 16 years) until age 19.

Appendix J

PROFILE CATEGORY:	Child Welfare
PROFILE NUMBER:	11
PROFILE TITLE:	Guardianship Proceedings: Reciting The Facts, 1979
PROFILE EXHIBITS:	C-0469 (unedited Exhibit NN)
PRINCIPAL RELATED EXHIBITS:	None
RESPONDENTS TO COMPLAINTS EXAMINED:	Provincial Court

Child Welfare Profile Number 11

SUMMARY:

A rural Judge, in response to the Director's application for permanent committal of the five children of a spinster wife (fathered by the man with whom she cohabited for 10 years, and from whom she and the children separated in 1977), conducted a judicial investigation required by The Child Welfare Act, 1972. As a result of his investigation, heard on 27 March and 04 April 1979, he declared the five siblings to be neglected children and ordered them returned to their mother subject, indefinitely, to the Director's supervision, and subsequently gave a written recitation of the facts insofar as he ascertained them from his investigation. (This was one of only three judicial investigations from 1965 to 1990 in which the Commission located a recitation of facts required by The Child Welfare Act, 1972 and its predecessor, The Child Welfare Act, 1964.)

On advice of the Justice solicitor who represented the Director on his permanent committal application, the Judge's written recital was relied upon to avoid, in future, certain irregularities in the conduct of Social Services and a rural District in handling this neglected children proceeding.

Appendix J

PROFILE CATEGORY: Child Welfare

PROFILE NUMBER: 12

PROFILE TITLE: Guardianship And Adoption Proceedings: 1979 To 1985

PROFILE EXHIBITS: C-0470 (unedited Exhibit OO)

PRINCIPAL RELATED EXHIBITS: Memorandum Of Evidence [53] (dated 16 October 1990)

RESPONDENTS TO COMPLAINTS EXAMINED: Social Services

Justice

Child Welfare Profile Number 12

SUMMARY:

Shortly after birth on 31 May 1979 in an urban Newfoundland community, a girl took up residence with her spinster mother at the residence of the mother's parents and of six brothers and sisters of the mother ranging in age from 14 to 27 years (all save one of whom were under medical treatment and none of whom were employed). Although a Judge, on 16 February 1981, committed the girl permanently to the Director (whose request to Justice for legal assistance in making the committal application was not answered), the girl continued to reside with her maternal grandmother (the grandfather having died on 15 June 1980 and her mother having left in October 1980 to cohabit with a man). When the grandmother began frequenting beverage parlours, the girl was parented by one of her mother's teenage sisters.

On 29 January 1981 the mother made a non-ward agreement with the Director regarding the girl and on 16 January 1981 a Judge committed the girl permanently to the Director.

Not until 14 May 1982, however, when the urban District learned of attempted incestuous conduct involving other persons in the home where the girl was continuing to live, did a District social worker apprehend the girl and place her in a foster home. Shortly following, the District recommended adoption of the girl by the couple operating the placement foster home and on 09 August 1982 the Director signed a Consent To Adoption for that purpose. However, the Director and the rural District did not take steps to facilitate finalization of the adoption for another 32 months; namely, on 17 May 1985.

Appendix J

PROFILE CATEGORY:	Child Welfare
PROFILE NUMBER:	13
PROFILE TITLE:	Institutional Foster Care - Waterford Hospital; Girls Home And Training School
PROFILE EXHIBITS:	C-0499 (unedited Exhibit ZZ)
	Memorandum Of Evidence [13] (dated 30 September 1990)
PRINCIPAL RELATED EXHIBITS:	None
RESPONDENTS TO COMPLAINTS EXAMINED:	health care professionals
	Social Services
	Health
	Justice

Appendix J

Child Welfare Profile Number 13

SUMMARY:

While a resident of the Girl's Home and Training School in the Pleasantville area of St. John's, Newfoundland where she had been placed on 29 April 1976 by the Director's District representative following her permanent committal to the Director as a juvenile delinquent by a Judge sitting at Placentia, a girl born 21 September 1960 submitted to a tubal ligation at a St. John's hospital without the Director's consent. This event prompted responses from Social Services, Justice and Health as well as health care professionals; responses which did not resolve legal questions about circumstances requiring, and responsibility for giving, consent for a tubal ligation.

Prior to living in the Home, she had been placed in foster homes, at Waterford Hospital, and in her parents' home under the Director's supervision; all of them placements which had proven futile as efforts to improve either her attitude or behaviour. Subsequent to leaving the Home she was imprisoned in a federal women's penal institution upon sentencing for a criminal offence.

PROFILE CATEGORY: Child Welfare

PROFILE NUMBER: 14

PROFILE TITLE: Group Home Resident's Complaints Regarding Two School Teachers, 1989 To 1990

PROFILE EXHIBITS: C-0532 (unedited Exhibit JJJ)

PRINCIPAL RELATED EXHIBITS: C-0504 (unedited Exhibit CCC)

C-505 (unedited Exhibit DDD)

C-0511

RESPONDENTS TO COMPLAINTS EXAMINED: Social Services

CROSS REFERENCES: Criminal Investigation Profile Number 02

Appendix J

Child Welfare Profile Number 14

SUMMARY:

A boy (born 25 September 1975) living in a group foster home in St. John's, where the Director (to whom he had been committed) had placed him, complained through his group home supervisors to a St. John's West District social worker in May 1989 that he had been assaulted earlier the same month by a male teacher at the school he was then attending at St. John's. The advice of a District social worker to her District supervisors, in late August or early September 1989, to notify the Constabulary was not accepted. In the event - on 18 January 1990 - the worker, herself, notified the Constabulary without first consulting her superiors.

The Constabulary conducted an investigation to ascertain whether there were grounds for criminal charges (Criminal Investigation Profile Number 02).

Appendix J

PROFILE CATEGORY: Child Welfare

PROFILE NUMBER: 15

PROFILE TITLE: Foster Home Caring For Handicapped Children 1971 To 1988

PROFILE EXHIBITS: C-0628 (unedited Exhibit PPP)

PRINCIPAL RELATED EXHIBITS: C-0501 (unedited Exhibit AAA)

RESPONDENTS TO COMPLAINTS EXAMINED: Social Services

CROSS REFERENCES: Criminal Investigation Profile Number 04

Appendix J

Child Welfare Profile Number 15

SUMMARY:

Licensed by Social Services on 01 November 1971 to operate a regular foster home for a maximum of six children and by 06 March 1972 licensed for a maximum of nine children, a rural Newfoundland couple was, in 1975, accommodating at their residence (to the relief and with the gratitude of Social Services) children who in the main were physically or mentally challenged; some of them children who had lived in or were awaiting admission to Exon House, a home for severely handicapped young persons operated by Social Services at St. John's.

Three of the concerns regarding the foster home which presented to the Director and his District representatives were: (a) the justification for placing a female child (born 31 July 1967) under treatment for cystic fibrosis (an hereditary disease affecting pancreas and lungs) in this foster home on 19 October 1971 and maintaining her there until 24 March 1983 (concern not explained); (b) the child's allegation that while living there she was physically mistreated by her foster mother and sexually mistreated by the foster mother's visiting brother (concern not resolved), and (c) arrangements for religious observance by the female child and some of the other children staying in this foster home (concern not resolved).

PROFILE CATEGORY: Child Welfare

PROFILE NUMBER: 16

PROFILE TITLE: Extra-Judicial Arrangements Regarding Children In Need Of Protection

PROFILE EXHIBITS: Memorandum Of Evidence [03] (dated 30 September 1990)

PRINCIPAL RELATED EXHIBITS: C-0458 (unedited Exhibit CC), pages 134 to 135

C-0460 (unedited Exhibit EE), pages 70 to 74

RESPONDENTS TO COMPLAINTS EXAMINED: Social Services

CROSS REFERENCES: Child Welfare Profile Number 09

Child Welfare/Criminal Investigation Profile Number 04

Appendix J

Child Welfare Profile Number 16

SUMMARY:

At least three types of extra-judicial arrangement have been made in place of or supplementing an Order committing a child to the Director.

One type of arrangement was a written agreement between a parent having custody, care and control of his or her child and a person not legally permitted to receive a child under The Child Welfare Act, 1972, subsection 45(1) (that is, someone other than a person authorized by law or of the same blood as the spinster mother of a child or of the same blood of the married parents of a child) under which that person agreed to receive and care for the parent's child for a specified or indefinite period.

A second type of arrangement was a written agreement between the Director's District representative and a parent of a child who was the subject of an Order committing the child temporarily to the Director, which specified steps a parent must take to improve the prospects of having his or her child returned (for example, following a doctor's advice; keeping appointments with a social worker; not frequenting beverage rooms, and attending parent effectiveness training programs).

The third type of arrangement was an understanding between (a) parents of a child subject to a temporary committal Order, (b) the Director's District representative and (c) a Justice solicitor which provided that notwithstanding the committal Order the affected child or children would be reunited with parents before expiry of the term of the committal Order.

Appendix J

PROFILE CATEGORY: Child Welfare/Criminal Investigation

PROFILE NUMBER: 01

PROFILE TITLE: 1985 To 1989

PROFILE EXHIBITS: C-0423

PRINCIPAL RELATED EXHIBITS: C-0432

RESPONDENTS TO COMPLAINTS EXAMINED: Social Services

Constabulary

Appendix J

Child Welfare/Criminal Investigation
Profile Number 01

SUMMARY:

Three siblings - sisters born 10 March 1977 and 02 July 1978 and a brother born 31 March 1979 - were placed in an urban home by the Director's representative on 02 June 1984 with a married couple and on 08 February 1985 were adopted by them. The existing family of the couple (married February 1978) comprised two boys - born on 12 March 1972 and 03 December 1974 - of the husband's previous marriage.

No apprehension by the Director or reporting to the Constabulary, the responsible police force, resulted from the youngest child presenting on 22 May 1985 at the local urban hospital with burns to about 20 per cent of his body; injuries which the adoptive father attributed to the child having "jumped into a hot bath" and which were reported to the District manager.

A complaint of abuse of the five children residing with the couple received by a District social worker on 06 February 1987 resulted in her apprehending them on 09 February 1987 from the schools they were then attending, after which they were medically examined, placed in foster care and, on 19 February 1987, committed by a Judge for six months to the Director as children in need of protection. However the District manager sent to the Director reports regarding the matter prepared by herself instead of those of the District social worker involved.

On 10 February 1987 the Constabulary was informed of the injuries sustained in May 1985 by the youngest boy and at or about the same time was apprised of circumstances pertaining to the apprehension of the five children on 09 February 1987. The Constabulary's resulting criminal investigation ultimately produced 10 charges of assault against the mother, all save one of which related to the three adopted children. Justice proceeded with five charges - all regarding the youngest of the three adopted children, a boy. The prosecution resulted in four convictions for which the mother was sentenced to fines in the total sum of $800.00 ($100.00, $150.00, $250.00 and $300.00) imposed by a Trial Division Justice sitting at Wabush, Newfoundland. One of the Crown's four appeals from the sentences was allowed by the Court of Appeal on 31 July 1989 which substituted six weeks' imprisonment for the $300.00 fine.

Internal inquiries at Social Services regarding the competence of the District manager's superintendence of the affected family and responses to complaints to the District regarding parenting in the family from a number of sources independent of District social workers, were inconclusive.

Appendix J

PROFILE CATEGORY: Child Welfare/Criminal Investigation

PROFILE NUMBER: 02

PROFILE TITLE: Rural Community, 1972 To 1973;

Rural Community And St. John's, 1982 To 1984

PROFILE EXHIBITS: Volume 1 - C-0449 (unedited Exhibit Z)

Volume 2 - C-0449A (unedited Exhibit Z.1)

Volume 3 - C-0449B (unedited Exhibit WW)

PRINCIPAL RELATED EXHIBITS: C-0453 C-0487

Memorandum Of Evidence [14] (dated 30 September 1990)

Memorandum Of Evidence [28] (dated 30 September 1990)

Memorandum Of Evidence [30] (dated 30 September 1990)

Appendix J

RESPONDENTS TO COMPLAINTS EXAMINED: Social Services

health care professionals

R.C.M.P.

Justice

Appendix J

Child Welfare/Criminal Investigation
Profile Number 2

SUMMARY:

On the strength of receiving an allegation from a female student on 29 November 1982 that the student's father had, earlier the same day, physically assaulted her for not "making her bed" and observing marks on the student's person, her homeroom teacher made a report to the visiting school guidance counsellor who lodged a complaint with a District social worker.

The same day, the social worker apprehended the student (born 17 April 1968) - the first of two daughters in her family - and placed her in Presentation House (a receiving home for temporary care of recently-apprehended children) at 50 Bonaventure Avenue, St. John's. From there, on 21 December 1982, the student was moved by a St. John's District social worker into the care of a rural Newfoundland couple licensed to operate a regular foster home.

By this date, both her father and mother had been criminally charged by the R.C.M.P. On 07 December 1982 the father was charged for having assaulted his first born daughter causing her bodily harm. In the course of the investigation which preceded that charge, the R.C.M.P. reinvestigated the circumstances of death of the second daughter (born 29 May 1969). Her death, on 03 April 1972 at the Janeway (to which she was transferred on 31 March 1972 from a rural Newfoundland hospital where she was admitted on 29 March 1972 presenting multiple fractures - in various stages of healing - to much of her person) had been the subject of an R.C.M.P. investigation in 1972 and a Magisterial enquiry in 1973; both of which were inconclusive.

The reinvestigation in 1982 resulted in the father being further charged by the R.C.M.P. on 20 December 1982, in company with the mother, for criminal negligence causing the second born daughter's death.

On 25 January 1983, the Unified Family Court Justice committed the first born daughter temporarily as a child in need of protection - until 30 June 1983 - to the Director. She subsequently continued to be subject to temporary committal Orders to age 16 years and beyond then was in the Director's extended care until 31 August 1986 when she was 18 years old.

Although the two male children of the family (born 05 October 1971 and 15 August 1974) were committed to the Director as children in need of protection on 13 June 1983 by the Unified Family Court Justice until final disposition of the Director's committal application to Court regarding them, the Director permitted them to continue residing with the father and mother until 07 October 1983, prior to and on which date all criminal charges against the parents were resolved.

On that date the mother was sentenced to two years imprisonment (reduced to six months with three years probation by the Court of Appeal on 26 January 1984) for the lesser and included offence of assault in respect of the deceased second born daughter; charges against the father in respect of the deceased daughter and the surviving first born student daughter having in effect been abandoned on 31 August 1983.

Crown counsel testified at the Inquiry that, in his judgment, (a) the nature and manner of health care of the deceased daughter warranted prosecution of the mother for the lesser and included offence; (b) that consideration, and the repudiation of her statement to the R.C.M.P. by the only person to incriminate the husband on the charge against him regarding the deceased daughter justified his not being prosecuted, in that regard, on any charge, and (c) the refusal of the surviving daughter to testify against her father justified his not being prosecuted for the charge of assaulting her.

By authority of a series of Orders of the Unified Family Court Justice the first born son remained committed to the Director's care to age 16 years and was in the Director's extended care until 01 March 1990 when he was eighteen years old. For most of 1988 he was treated in Mount Cashel Manor, an assessment and stabilization centre for young persons operated by Mount Cashel, due in part to having continued to live with his parents after they were criminally charged. The second born son continued to be committed to the Director under Orders of the Unified Family Court Justice when public hearings of the Inquiry concluded on 29 June 1990.

(By 30 June 1990, Mount Cashel Manor, and Coach House operated by Social Services, the only two assessment and stabilization centres in the Province of Newfoundland, had closed.)

Appendix J

PROFILE CATEGORY: Child Welfare/Criminal Investigation

PROFILE NUMBER: 03

PROFILE TITLE: St. John's, 1976 To 1982

PROFILE EXHIBITS: C-0455 (unedited Exhibit AA)

PRINCIPAL RELATED EXHIBITS: None

RESPONDENTS TO COMPLAINTS EXAMINED: Social Services

health care professionals

Justice

Constabulary

Appendix J

Child Welfare/Criminal Investigation
Profile Number 03

SUMMARY:

A mother of two children (born January 1973 and August 1975) -a third child having died in 1970 at six years of age - placed the older child in the Director's care under a non-ward agreement made 02 December 1976, after 18 months of deviant spousal conduct (such as compelling her to kneel on the deceased son's grave and promise the husband fidelity), obdurate behaviour by the older child, and several medical reports attributing the misbehaviour of the older child to the mother's parenting inadequacies. During much of the next 50 months - until January 1981 - the older child was subject to the Director's care pursuant to non-ward agreement (the first made in December 1976) and seven judicial Orders by the St. John's Family Court Judge or (from 18 June 1979) by the Unified Family Court Justice (two of which, made on 27 September 1977, were in conflict; one continuing, the other terminating, the boy's committal).

On 13 January 1981 a child psychiatrist concluded in a written report that the older child's condition at the time "cannot be directly related to possible maternal inadequacies in the past." However, during the following 14 months three additional committal Orders by the Unified Family Court Justice continued the Director's responsibility for the older child, the third of which, made 17 May 1982, committed him permanently to the Director. By now he had been living for five months at Mount Cashel under placement by the Director's representative.

In December 1976 - the month the mother first placed the older child with the Director - an internal hospital report stated that the father had left the family "to live with" a 13-year-old girl; a report that came to the attention of Justice which, on 12 January 1977, requested the Constabulary to investigate. Dissatisfied with the Constabulary's resulting investigative report dated 18 February 1977, a Justice solicitor requisitioned a more complete Constabulary investigation. There is no evidence the request was responded to by the Constabulary or followed up by Justice.

Notwithstanding her turbulent adult domestic life, the mother was continuing to parent the younger boy on 17 March 1982, the date to which the Inquiry examined the matter.

Appendix J

PROFILE CATEGORY: Child Welfare/Criminal Investigation

PROFILE NUMBER: 04

PROFILE TITLE: [1978 - 1983]

PROFILE EXHIBITS: C-0460 (unedited Exhibit EE)

PRINCIPAL RELATED EXHIBITS: None

RESPONDENTS TO COMPLAINTS EXAMINED: Social Services

Constabulary

Justice

CROSS REFERENCES: Child Welfare Profile Number 16

Child Welfare/Criminal Investigation
Profile Number 04

SUMMARY:

During investigation of an allegation received on 16 February 1978 that a father of four children had publicly exposed himself, the Constabulary learned from the father's mother-in-law and three of his four children (girls born in 1961 and in 1972, and a boy born in 1963) that the father was mistreating the three children who, in turn, were concerned the father was mistreating the fourth child (a boy born in 1971). Unable to secure satisfactory evidence identifying the father as the exhibitionist, the Constabulary's investigative report dated 09 March 1978 did not recommend charging the father but stated that "something should be done with regards to his children." The report was received on or shortly after 16 March 1978 by Justice which, on 21 March 1978, copied the Director and promised the Constabulary a reply following what Justice described as a separate Social Services' investigation and (perhaps) a case conference between Justice and Social Services "to determine a plan which we believe to be in the best interests of the children."

There is no evidence of such an investigation, case conference or a response by Justice to the Constabulary. However, the Director's District representatives apprehended the two younger children while the two older children took up temporary residence with relatives. On 08 August 1978, the youngest child was committed temporarily (to 30 June 1979) and the next-to-youngest child was committed permanently, to the Director.

The child permanently committed, who in May 1979 was hospitalized for treatment of psychiatric problems occasioned by his father's mistreatment of him in the home, eventually visited his parents occasionally but remained committed to the Director's care to age 16 years in 1979 and afterwards remained in the Director's extended care until 16 March 1983.

The temporary committal of his brother, youngest of the four children, was extended on 08 August 1979 for 12 months by the Unified Family Court Justice, subject to what he described as "conditions" expressed in a letter from the Director's District representative to the parents, which both parents had signed. On 15 October 1980, notwithstanding some reservations by a District social worker professionally involved with the family, the Director successfully applied to the Unified Family Court Justice to replace temporary committal of the child with Director's supervision of the child in the child's home.

(By now, the oldest child was planning nuptials (that occurred on 28 November 1980) and the second oldest child, living away from home, was visiting from time to time.)

Appendix J

PROFILE CATEGORY: Child Welfare/Criminal Investigation

PROFILE NUMBER: 05

PROFILE TITLE: [1980 - 1984]

PROFILE EXHIBITS: C-0461 (unedited Exhibit FF)

PRINCIPAL RELATED EXHIBITS: None

RESPONDENTS TO COMPLAINTS EXAMINED: Social Services

R.C.M.P.

Justice

Appendix J

Child Welfare/Criminal Investigation
Profile Number 05

SUMMARY:

In the twelfth year of marriage - specifically, on 10 March 1980 - a wife was admitted to a mental health facility and, while a patient there, confessed to a facility social worker that she had physically abused the youngest of the three children of her marriage, a girl (born in 1976); information the social worker reported to Social Services whose Director's District representative visited the mother's home on 11 March 1980 and interviewed her husband who admitted he had physically abused all three children, including another girl (born in 1969) and a son (born in 1974). On behalf of the Director the children were apprehended on the same day and by Orders of the Unified Family Court Justice were, on 26 March 1980, committed temporarily - for six months - to the Director. On 09 April 1980 the three children were returned to their parents and the Orders committing them, effective until 26 September 1980, were rescinded on 21 January 1981.

Thirty-two months to the day following the childrens' return to the parents - namely on 09 December 1982 - the older daughter alleged to her school guidance counsellor that while in foster care in 1980 (under committal to the Director), her foster father had sexually abused her; conduct, she said, was subsequently duplicated in her own home against her by a babysitter and against her and her sister by her father. The same day the counsellor reported the allegation to the local District. On 11 December 1982 the three children were again apprehended by a District social worker and committed to the Director temporarily - for one year - on 11 January 1983 by the Unified Family Court Justice. By now the wife had separated from her husband and moved to another province where, in April 1983, the Director placed the three children with her.

On the complaint of the elder daughter's school guidance counsellor to them on 10 December 1982, members of the R.C.M.P. undertook a criminal investigation that resulted in a report dated 04 March 1983 (a) recommending no charges against the babysitter (because charging him was now statute-barred) and no charges against the father, and (b) promising to pursue the investigation against the foster father.

Upon receipt of the R.C.M.P. report, Justice copied Social Services and accepted the report's recommendations. The Commission found no evidence that Justice sought to ascertain the outcome of the continuing R.C.M.P. investigation of the elder daughter's complaint against her foster father.

Appendix J

PROFILE CATEGORY: Child Welfare/Criminal Investigation

PROFILE NUMBER: 06

PROFILE TITLE: [1974 - 1979]

PROFILE EXHIBITS: C-0462 (unedited Exhibit GG)

PRINCIPAL RELATED EXHIBITS: None

RESPONDENTS TO COMPLAINTS EXAMINED: Social Services

teachers

health care professionals

R.C.M.P.

Provincial Court

Child Welfare/Criminal Investigation
Profile Number 06

SUMMARY:

One of the two female children born (in 1960 and 1962) to a spinster mother prior to her marriage (in 1964) - a marriage of which she was delivered of five more children - was apprehended by a District social worker on 09 February 1974 upon a complaint the child had been severely physically abused by her stepfather - the mother's husband - and was placed in a foster home. The medical doctor who examined the female child shortly after apprehension medically confirmed the complaint and notified the R.C.M.P. which investigated and criminally charged the stepfather.

On 28 February 1974 the apprehended child (born in 1960) was committed for six months to the Director and the stepfather, convicted of assaulting the child, was sentenced by a Judge to six months imprisonment and probation for two years. The remaining six children of the marriage continued to live with their mother.

Twice following, on 16 September 1974 and on 25 September 1975, the committal to the Director of the female child was extended for one year. On 23 November 1976, her committal was extended in these terms: "to sixteenth birthday, and with consent to seventeen years of age."

The stepfather returned home on 29 June 1974, upon release from prison. On 06 July 1977 - now 17 years old - the female child returned home.

While the female child had been in care and after her return home in 1977 the responsible District had continued following the family; formally until the child reached 16 years of age in 1976, and afterwards, informally.

On 23 July 1979 the female child again left home - this time of her own volition - because, upon her mother's complaint, the stepfather had been criminally charged with assaulting the mother.

PROFILE CATEGORY: Child Welfare/Criminal Investigation

PROFILE NUMBER: 07

PROFILE TITLE: 1976 - 1977

PROFILE EXHIBITS: C-0631 (unedited Exhibit HH)

PRINCIPAL RELATED EXHIBITS: None

RESPONDENTS TO COMPLAINTS EXAMINED: school counsellor

Social Services

R.C.M.P.

Justice

St. John's Family Court

Appendix J

Child Welfare/Criminal Investigation
Profile Number 07

SUMMARY:

A female child (born 12 September 1960) arrived at school on 02 April 1976 exhibiting numerous bruises. The school counsellor contacted a rural District social worker who went to the school and accompanied the female child to the Janeway where physical examination confirmed extensive physical injuries due to child abuse. (Photographs of the injuries were not taken because the female child's stepfather declined the Janeway's request to do so.) On the same day the female child was apprehended by a District social worker and placed in the Girl's Home and Training School.

The female child was one of two daughters (the other having been born in 1958) of the first marriage of her mother who was, following her divorce and before her marriage in 1967 to the stepfather, delivered of a son in 1965.

The other female child, living away from home, alleged to a District that there had been a history of physical abuse of the three stepchildren (the two daughters and the son) and of the mother, by the stepfather. After the District, on 15 April 1976, responded to this allegation by requesting access to the son to have him medically examined, his mother and stepfather responded by sending him to New Brunswick to live with his maternal grandmother.

A report to Justice dated 02 May 1976 of an R.C.M.P. investigation concluded the female child's injuries resulted from the stepfather's excessive punishment of the girl. The report suggested Justice would agree to R.C.M.P. representations regarding the place of trial if the stepfather (a member of the R.C.M.P.) was criminally charged, but added that a Justice solicitor representing the interests of Social Services told the R.C.M.P. that Social Services was not as interested in seeing a criminal charge preferred as it desired the stepfather to receive professional help.

The stepfather was ultimately charged by the R.C.M.P. with assault of the female child causing bodily harm, a charge of which, on 22 September 1976, he was found guilty at St. John's Family Court (although he resided in a rural area serviced by a Provincial Court) and for which he was discharged on the conditions of a probation Order for a term of two years, namely (a) to keep the peace toward the female child he had assaulted; (b) keep psychiatric appointments, and (c) return to Court on 31 March 1977 for determination by the Court of progress in his psychiatric treatment based on a report he was required to have his psychiatrist file with the Court by that date.

On the same date, the female child was committed to the Director to age 17 years under section 35 of The Child Welfare Act, 1972. While committed to the Director his District representatives permitted her to visit her home.

The investigation of a complaint by the female child to a District on 21 October 1976 that during one home visit she observed the stepfather physically assault the boy who had returned in September 1976 from New Brunswick, was commenced but never concluded (the stepfather having, in the course of the investigation, ordered a District social worker from his home).

Appendix J

In May 1977, a request from Social Services to Justice for advice on the prospects of obtaining a supervision Order regarding the boy was not answered.

On 18 July 1977, upon bringing the boy to hospital for admission, his mother and stepfather reported that the boy had a brief history of committing arson and self-inflicting injuries. A psychiatrist who there and then examined the boy recommended to Social Services that the boy be committed to the Director, the response to which, if any, is not documented.

PROFILE CATEGORY:	Child Welfare/Criminal Investigation
PROFILE NUMBER:	08
PROFILE TITLE:	1980 - 1983
PROFILE EXHIBITS:	C-0632 (unedited Exhibit MM)
PRINCIPAL RELATED EXHIBITS:	None
RESPONDENTS TO COMPLAINTS EXAMINED:	Social Services R.C.M.P.

Appendix J

Child Welfare/Criminal Investigation
Profile Number 08

SUMMARY:

A widowed mother of two daughters (born in 1963 and 1966 of her first marriage) remarried and (in 1974) gave birth to a third daughter.

On at least five occasions from 1973 to 1981 the mother resorted to Social Services for assistance; on 28 September 1973 when she found herself without shelter after taking up with a married man (who eventually became her second husband); on 20 November 1980 when she complained her second husband had beaten her and her second born daughter throughout the previous four years; and in early 1981, in July 1981 (on two occasions) and in August 1981 for the same reason. The R.C.M.P. were twice contacted; first in July 1981 (to investigate the stepfather's alleged assault of two of the three daughters) and secondly, in August 1981 (to assist a District social worker remove one daughter from her home where the stepfather was detaining her).

In addition to several extra-judicial measures employed by the District to address these domestic crises, the two older daughters were committed for one year to the Director on 15 August 1974 (rescinded 16 June 1975) as a result of the September 1973 contact with the District; the second born daughter was made subject to the Director's supervision on 04 February 1981 for one year (as a result of the early 1981 contact); the youngest daughter was committed to the Director for one year on 06 October 1981 (as a result of the August

1981 contact) which was extended for six months on 17 November 1982 and again extended for six months on 24 May 1983 (rescinded 01 September 1983).

The R.C.M.P. concluded in 1981 that there was insufficient evidence to charge the stepfather with assault of any of the children.

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PROFILE CATEGORY: Child Welfare/Criminal Investigation

PROFILE NUMBER: 09

PROFILE TITLE: [1980 - 1981]

PROFILE EXHIBITS: C-0463 (unedited Exhibit JJ)

PRINCIPAL RELATED EXHIBITS: None

RESPONDENTS TO COMPLAINTS EXAMINED: Social Services

Justice

Provincial Court

Child Welfare/Criminal Investigation
Profile Number 09

SUMMARY:

Suspicious that his daughter (born in 1972) had been sexually assaulted by his wife's 16-year-old brother, a juvenile, who "babysat" the daughter while he and his wife went out on 31 May 1980, a husband complained to the R.C.M.P. on 11 June 1980. Upon further reflection, the father opposed criminal prosecution of his wife's brother; a position he expressed to the R.C.M.P. during its investigation of his complaint.

By now the father had submitted his daughter to examination by a medical doctor. When Social Services and the R.C.M.P. learned of this examination, both requested all records the doctor made as a result of the examination of the daughter. Pending receipt of a search warrant or parental consent, neither of which he ever received, the doctor declined the requests. Apprised by Social Services of his duty to report, he verbally stated he found no evidence of sexual abuse of the daughter after expressing the concern that he did not want to "get slapped with a libel suit."

The R.C.M.P. completed a criminal investigation at the request of Justice that resulted in the wife's brother being convicted of the juvenile delinquency of indecent assault defined by the Criminal Code and being made subject to the conditions of a probation Order for one year.

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PROFILE CATEGORY:	Child Welfare/Criminal Investigation
PROFILE NUMBER:	10
PROFILE TITLE:	[1980 - 1982]
PROFILE EXHIBITS:	C-0464 (unedited Exhibit KK)
PRINCIPAL RELATED EXHIBITS:	None
RESPONDENTS TO COMPLAINTS EXAMINED:	Social Services
	Justice
	R.C.M.P.

Appendix J

Child Welfare/Criminal Investigation
Profile Number 10

SUMMARY:

A District social worker whose investigation indicated a child born in 1964 had been sexually abused by her stepfather nonetheless recommended in her resulting report to the Director dated 26 November 1980 that because the child, her three siblings and her mother had separated from the stepfather and left the area for which the District was responsible, and because of the potential aggravation to the affected child of legal proceedings, police need not be contacted and the Director should take no legal action.

As a result of the Director copying the social worker's report to Justice, a Justice solicitor instructed the R.C.M.P. to investigate and report to Justice which would then decide whether criminal charges were warranted.

The Justice response to the resulting R.C.M.P. investigative reports, in a letter dated 24 April 1981, was that "no charges be laid against ... [the stepfather], but ... if any similar instances arise ... report them to me immediately for purposes of a prosecution." To now prosecute, the Justice solicitor explained, might interfere with the child's continuing rehabilitation from the trauma of her stepfather's alleged misconduct toward her.

PROFILE CATEGORY: Child Welfare/Criminal Investigation

PROFILE NUMBER: 11

PROFILE TITLE: [1980 - 1985]

PROFILE EXHIBITS: C-0465 (unedited Exhibit LL)

PRINCIPAL RELATED EXHIBITS: None

RESPONDENTS TO COMPLAINTS EXAMINED: Social Services

health care professionals

teachers

R.C.M.P.

Justice

CROSS REFERENCES: Child Welfare/Criminal Investigation Profile Number 20

Child Welfare/Criminal Investigation
Profile Number 11

SUMMARY:

What was described by a medical doctor as "poor impulse control" by a stepfather during a domestic dispute with his wife resulted on 12 June 1980 in him striking the second born (in 1976) and only female among his wife's three children by a former marriage. The girl was taken to the local District by her paternal grandmother, and to a medical clinic by her mother where the medical doctor identified bruises on her face and buttocks indicative to him of physical child abuse for which the child was immediately hospitalized. The two male children in the family, who were also examined, presented no indications of being abused.

Following a District assessment of the family (during which the stepfather, himself a victim of child abuse by his account, expressed contrition for having caused the girl's injuries and agreed to submit to psychiatric treatment) the girl, upon discharge from hospital on 20 June 1980, was permitted to return home without formal intervention (such as by apprehension) by the District.

Informal involvement of the District with the family, including visits to the family, continued during the ensuing 20 months. A further assessment of the family resulted in a report dated 06 April 1981 which concluded that the stepfather's conduct was an "isolated incident resulting from a loss of temper." Because the District social worker conducting visits to the family was not convinced of their efficacy she arranged in January 1982 for a public health nurse and the children's school teachers to assist with their supervision.

A public health nurse subsequently observed bruising on the left temple and around the left eye of the female child which she reported to the District. In response the District interviewed the mother on 24 February 1982 (and learned from her that the stepfather habitually beat the three children); had the three children examined by a public health nurse on 25 February 1982; accompanied the three children and their parents (with assistance from the R.C.M.P.) on 27 February 1982 to the local cottage hospital for medical examination (where the physician on call declined to examine), and therefore had the three children admitted to another hospital on the same date.

There, on 01 March 1982, the hospital doctor concluded that because she could not then find any evidence of physical abuse of the children and due to the mother's reluctance to say who was responsible for alleged mistreatment of the children, there was no evidence to support criminal charges. She felt, however, that the three children should be apprehended because they were presenting emotional problems.

The same date, when the stepfather sought to remove the children from hospital before medical testing was completed, a District social worker apprehended them. However, following a case conference on 04 March 1982 of the area's child abuse team -attended by a regional co-ordinator, two doctors, a psychologist, the local district manager and a district social worker - the children were returned home without resort to a judicial investigation subject, however, to District supervision (including monthly medical examinations of all children and monthly psychiatric examinations of both the mother and stepfather).

An R.C.M.P. investigative report dated 16 March 1982 concluded there was insufficient evidence to institute criminal prosecution of the stepfather.

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PROFILE CATEGORY: Child Welfare/Criminal Investigation

PROFILE NUMBER: 12

PROFILE TITLE: Improper Placement Of Child For Parenting, 1981 To 1982

PROFILE EXHIBITS: C-0472 (unedited Exhibit QQ)

PRINCIPAL RELATED EXHIBITS: Memorandum Of Evidence [15] (dated 30 September 1990)

RESPONDENTS TO COMPLAINTS EXAMINED: Social Services

Provincial Court

R.C.M.P.

Justice

Child Welfare/Criminal Investigation
Profile Number 12

SUMMARY:

Having given birth to a female child on 16 March 1981, the mother signed a Consent To Adoption of the child and, to provide for the child's care until placed for adoption by the Director, made a non-ward agreement with the Director. When the mother subsequently departed hospital, her child remained behind.

Several days later the mother returned to hospital, removed the child and placed her with a married couple with whom she was barely acquainted and of whose place of residence she was unaware. The husband and wife had, for at least a year, wanted to adopt an infant child without waiting their turn in Newfoundland's adoption program.

Upon learning of these developments a District social worker apprehended the child from the husband and wife and placed her with a couple licensed to operate a regular foster home.

The subsequent judicial investigation resulted in an Order of a Judge on 28 May 1981 that declared the child neglected and committed her permanently to the care and custody of the husband and wife with whom the mother had originally placed her. Although characterizing the Judge's decision as "preposterous", a Justice solicitor chose not to appeal from this Order; being of the view the couple with whom the mother placed her child were "well intentioned."

Appendix J

The R.C.M.P., in response to a Justice request on 10 June 1981 to determine whether provincial offences had been committed contrary to Newfoundland child welfare and adoption legislation, concluded in an investigative report dated 18 September 1981 that despite the availability of sufficient evidence to charge " ... it is felt a charge at this point would serve no useful purpose ... ." On 08 July 1982 Justice concurred with this conclusion.

PROFILE CATEGORY:	Child Welfare/Criminal Investigation
PROFILE NUMBER:	13
PROFILE TITLE:	1986 To 1990
PROFILE EXHIBITS:	C-0474 (unedited Exhibit RR)
	C-0474A (unedited Exhibit RR.1)
PRINCIPAL RELATED EXHIBITS:	None
RESPONDENTS TO COMPLAINTS EXAMINED:	Social Services
CROSS REFERENCES:	Criminal Investigation Profile Number 04

Appendix J

Child Welfare/Criminal Investigation
Profile Number 13

SUMMARY:

A husband and wife, parents of one child (born in 1970) had since 25 February 1981 been licensed to operate their rural community residence as a regular foster home. One of the foster children for whom they provided was a girl who had come from an 11-year placement in another foster home (Child Welfare Profile Number 15) and who lived with them from 24 March 1983 until 01 September 1986. Two other foster children they sheltered were sisters (Criminal Investigation Profile Number 04); the older sister having been born on 09 November 1972 and the younger sister born in 1974, both of whom were placed in the foster home shortly after 01 September 1986. Reports of the responsible District from 1981 to 1987 described content foster children being cared for by capable foster parents in this foster home.

Several developments in August and September 1988 - allegations on 17 August 1988 from the foster girl who left the foster home on 01 September 1986 of having, while placed there, been sexually abused by the foster father; allegations on 06 September 1988 by the older of the foster sisters then living there that the foster father had been sexually engaged with her for the past year, and the older sister's suicide on 07 September 1988 - resulted in withdrawal of the foster license, divorce of the foster parents, and a sentence of two years imprisonment for the foster father upon his conviction of having sexually assaulted the foster girl who left the home on 01 September 1986.

PROFILE CATEGORY:	Child Welfare/Criminal Investigation
PROFILE NUMBER:	14
PROFILE TITLE:	1973 To 1974
PROFILE EXHIBITS:	C-0482 (unedited Exhibit TT)
PRINCIPAL RELATED EXHIBITS:	None
RESPONDENTS TO COMPLAINTS EXAMINED:	health care professionals Social Services R.C.M.P. Justice Provincial Court

Appendix J

Child Welfare/Criminal Investigation
Profile Number 14

SUMMARY:

A husband who agreed on 01 March 1973 to "babysit" the out-of-wedlock daughter born to the wife before 1970 (by another man) and the son born 06 October 1972 of the marriage (in September 1970) of the husband and wife, assaulted his son with his hands and a lighted cigarette during his wife's absence of several hours. Upon returning home, the wife took the son to the Janeway where he was admitted. A Janeway physician notified the Director. The Director contacted Justice which requisitioned a criminal investigation. Upon the Director's application a Judge sitting at Holyrood on 29 March 1973 committed the daughter and son to the Director temporarily, for one year, as neglected children.

Charged with the criminal offence of assault causing bodily harm to the boy, the husband was convicted on 29 October 1973 by the Holyrood Judge, following a trial, and was sentenced on 15 November 1973 to imprisonment for one year.

On 28 March 1974 the committal to the Director of the daughter and son, still living in foster care, was extended by the Holyrood Judge for a further one year period.

While the husband was imprisoned, his wife began living with another man and, on 18 February 1974, was delivered of a second son, fathered by the husband while awaiting trial in 1973.

The husband was released on parole from prison on 20 July 1974. At 2 p.m. on 01 August 1974, he acceded to his wife's request to attend her place of residence and "babysit" the second son while, she said, she, her cohabitant and the cohabitant's male friend went grocery shopping. When they failed to return by midnight, the husband brought the second son to a District social worker who placed him in a foster home. On the Director's application the second son was temporarily committed to him on 30 September 1974 for one year.

On 20 May 1975, the daughter and both sons (including the younger son temporarily committed to the Director for one year on 30 September 1974) were committed to the Director permanently.

Appendix J

PROFILE CATEGORY: Child Welfare/Criminal Investigation

PROFILE NUMBER: 15

PROFILE TITLE: 1974

PROFILE EXHIBITS: C-0484 (unedited Exhibit UU)

PRINCIPAL RELATED EXHIBITS: None

RESPONDENTS TO COMPLAINTS EXAMINED: Social Services

Justice

R.C.M.P.

Provincial Court

Child Welfare/Criminal Investigation
Profile Number 15

SUMMARY:

The son of licensed foster parents (with his mother's knowledge) and the oldest of three foster children (born 09 November 1959) living in the foster parents' home administered buttock burns by means of a stove damper handle upon another of the foster children (a boy born 07 May 1968). The incident occurred about February 1974.

The boy and his sister (born 22 June 1969) were moved to another foster home on 30 April 1974 because the foster mother reported she was pregnant and in poor health. Eight days later the woman licensed to operate the new foster home in which the brother and sister were placed reported to a District her suspicion that the boy had been abused. The resulting District report to the Director was copied by him to Justice which requested an R.C.M.P. investigation.

On 03 July 1974, after repeated efforts, an alternate home for the oldest foster child was found with her married sister. On 12 November 1974 both her and the son of the foster parents were convicted by a Judge sitting in a rural Provincial Court of the juvenile delinquency of assault defined by the Criminal Code for which each was sentenced to a fine of $25.00 and adjudged to be a "juvenile delinquent" under The Welfare of Children Act (Newfoundland legislation replaced on 02 April 1984 by the federal Young Offenders Act).

PROFILE CATEGORY: Child Welfare/Criminal Investigation

PROFILE NUMBER: 16

PROFILE TITLE: Adoption/Guardianship Proceedings, 1979 To 1981

PROFILE EXHIBITS: C-0485 (unedited Exhibit VV)

PRINCIPAL RELATED EXHIBITS: None

RESPONDENTS TO COMPLAINTS EXAMINED: health care professionals

Social Services

Justice

Child Welfare/Criminal Investigation
Profile Number 16

SUMMARY:

Into the home of a husband and wife, professional persons employed full-time outside the home and parents of a daughter about a year old, a male child born 19 January 1979 was placed for adoption by the Director's representative on 23 March 1979. A babysitter came to the home by day to supervise the girl and boy when the couple worked. In May 1979, that is, during the six month pre-adoption probationary period, the boy was hospitalized - in the urban community where he was living, then in another province, and finally at the Janeway - for the same unexplained physical injuries.

Following his discharge, he was brought for two outpatient follow-up visits to the Janeway; the first time with the wife; the second time with the husband. On the second follow-up, in November 1979, the husband expressed to a Janeway staff pediatrician his concern about the manner in which his wife was handling the boy. Available evidence, unclear regarding whether the couple's adoption of the boy in November 1979 was finalized before or after the second medical follow-up, established that Social Services was not informed of the husband's concerns until early in March 1980.

On 01 March 1980 the boy was again hospitalized at the Janeway for physical injuries (six fractures) that, in the opinion of a Janeway staff pediatrician, constituted "a suspected case of child abuse." In communicating this conclusion to the Director on 02 March 1980 the pediatrician added that when he had seen the boy with the husband in November 1979 "we were both a bit concerned about the mother's relationship with the child which was not good."

The boy was apprehended on 04 March 1980 at the Janeway by the Director's representative and on 25 March 1980, upon the Director's application, was committed to the Director for six months by the Unified Family Court Justice presiding over the judicial investigation into the boy's apprehension. (Whether influential in determining the place for the court hearing is unclear; however, the father asked the Director's representative to arrange the hearing in St. John's "as he felt if the matter was dealt with ... [in the community where the family lived] it would be very damaging to their personal lives." Special foster home care for the boy, recommended by a pediatrician who testified during the judicial investigation, was not provided by the Director or the responsible District.

In the months following the boy's discharge from the Janeway on 13 June 1980 there was debate within Social Services as to the degree of future supervision the boy and his family required and as to where the supervision would occur; the father having accepted employment in another urban Newfoundland community and being concerned any possibility of public knowledge there regarding supervision would be detrimental to the family's future. In the result the committal of the boy was terminated by the Unified Family Court Justice on 18 August 1980 at the Director's request, following which the family was once visited in the urban community to which they had relocated in September 1980, and remaining supervision was done by Social Services and the Janeway at St. John's until May 1981 with the parents' cooperation.

Notwithstanding (a) the extent of the injuries the boy presented with at the Janeway on 01 March 1980, (b) the staff pediatrician's immediate suspicion the injuries were the result of abuse, and (c) the mother's admission to the Janeway and the responsible District of having caused the injuries, Justice regarded as unnecessary the completion of the R.C.M.P. investigation commenced in March 1979 on the complaint of an urban District; that being advice given on 01 October 1980 by a Justice solicitor (subsequently professing little if any knowledge of criminal law) to the Associate Deputy Attorney General, who concurred in that view in his reply to the Justice solicitor on 02 October 1980. Moreover, on 03 October 1980 a St. John's East District social worker stated, in a letter to the R.C.M.P., that she did not feel "prosecution or further police investigation is warranted or necessary".

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PROFILE CATEGORY:	Child Welfare/Criminal Investigation	
PROFILE NUMBER:	17	
PROFILE TITLE:	Institutional Foster Care - Exon House, 1971 To 1988	
PROFILE EXHIBITS:	Volume 1 - C-0496 (unedited Exhibit XX)	
	Volume 2 - C-0496A	
PRINCIPAL RELATED EXHIBITS:	C-0539	C-0540
	C-0541	
RESPONDENTS TO COMPLAINTS EXAMINED:	health care professionals	
	Constabulary	
	Justice	
	Social Services	

Child Welfare/Criminal Investigation
Profile Number 17

SUMMARY:

In accordance with a non-ward agreement made on 06 October 1971 between the mother of a mentally-challenged girl (born 05 November 1968) and the Director, the girl was delivered by her mother into the care of the Director and lived under the Director's supervision until 01 February 1988 at Exon House, St. John's, administered by Social Services as a home for severely mentally- and physically-challenged children, about a one hour drive from the girl's home. Subsequent parental contact with the girl (by the mother only) was sporadic and, by parental choice, ceased on 19 February 1975.

A routine examination of the girl by a medical doctor practising at St. John's, about 9 a.m. on 26 March 1979, disclosed minimal bruising around the forehead, probably a result of what Exon House staff reported as the girl having banged her head repeatedly the previous weekend; information which prompted the doctor to recommend to Exon House that the girl be "observed closely during the day." Whether the doctor's recommendation was honoured could not be ascertained by the Commission.

Eleven hours later - at 8 p.m. on 26 March 1979 - the girl was admitted to the Janeway from Exon House. During initial examinations by two Janeway staff pediatricians over the next 19 hours the girl presented with swelling and bruising of scalp, forehead, face, behind both ears, and around neck and eyes. On 29 March 1979 the Janeway notified both the Director and the Constabulary.

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When discharged from the Janeway on 10 April 1979 the girl was returned on the Director's behalf to Exon House where her records made no mention of the fact of or reasons for her Janeway admission on 26 March 1979. The Commission located no evidence that (a) the Director's proposals to the administratrix of Exon House, in a letter dated 04 April 1979, that she totally assess the situation in Exon House in light of the foster girl's injuries and then meet the Director and a Justice solicitor to discuss, ever materialized, or that (b) the Director otherwise ever determined the manner of the girl's injuries (that is, assault, dereliction of supervision, accident, or self-infliction) or that (c) he directed special precautions be taken for the girl's future supervision.

The Constabulary's criminal investigation produced two reports. The first, dated 23 August 1979, received at Justice about 05 December 1979, though inconclusive as to laying criminal charges, pointed to opinions of Janeway pediatricians that the foster girl's injuries were not self-inflicted. The request on 14 December 1979 of a Justice solicitor for further investigation of the matter produced the second Constabulary report dated 06 June 1980, received by Justice about 18 June 1980, which concluded that the Constabulary could not "find evidence to suggest who was responsible for the alleged assault on ... [the foster girl], if indeed she was assaulted"; a conclusion with which a Justice solicitor agreed in the following note: "I have read this carefully. There does not appear to be sufficient to proceed with charges - Inquiry ??." The solicitor did not specify what type of inquiry he had in mind and no inquiry of any nature was subsequently held.

PROFILE CATEGORY: Child Welfare/Criminal Investigation

PROFILE NUMBER: 18

PROFILE TITLE: Guardianship/Parenting Proceedings 1976 To 1978

PROFILE EXHIBITS: C-0497 (unedited Exhibit YY)

Memorandum Of Evidence [19] (dated 30 September 1990)

PRINCIPAL RELATED EXHIBITS: None

RESPONDENTS TO COMPLAINTS EXAMINED: health care professionals

Social Services

St. John's Family Court

Constabulary

Justice

Appendix J

Child Welfare/Criminal Investigation
Profile Number 18

SUMMARY:

Upon divorcing a father and mother in 1977 a Trial Division Justice granted the father custody of the three children of the family. Two of the children were boys born 12 November 1965 and 23 September 1969. The older boy, born to the mother by another man prior to the marriage (in 1967), had been adopted into the marriage of the father and mother.

Older Boy. As a result of the adoptive father's efforts to discipline the older boy by striking him with a belt the boy left home on 30 March 1978 and went to the residence of his grandmother who brought him on the same day to the Janeway where and when he was admitted, treated, and apprehended on behalf of the Director who commenced in St. John's Family Court, but inexplicably did not proceed with, an application for a judicial investigation to have the boy committed to him or made subject to his supervision. Moreover the St. John's Family Court Judge did not press the Director to do so. Instead, the Director placed the boy at Mount Cashel upon his discharge from the Janeway on 07 April 1978 (perhaps on the basis of an Order the St. John's Family Court Judge made on or about 24 May 1978 authorizing the Director to detain the boy until the judicial investigation (that never occurred) was completed.

The result of a District social worker's contact with the Constabulary on 04 May 1976 was a criminal investigation by the Constabulary which produced a report dated 23 May 1978 that concluded there were grounds to lay a criminal charge. On 25 May 1978 the Director of Public Prosecutions noted on the report: "No criminal charges warranted" and on 30 May 1978 a Justice solicitor accordingly notified the Constabulary.

The mother, by now living in Ontario where she remarried on 04 February 1978, learned of the older boy's departure from home and applied to vary the custody Order (made in the 1977 divorce proceeding) to obtain custody of the older boy. In a Judgment granting her application, filed 06 September 1978, a Trial Division Justice described the father's treatment of the boy, albeit recognized as being isolated, as "a savage attack." On 23 September 1978 the mother removed the older boy from Mount Cashel and brought him to Ontario to live with her and her second husband.

Younger Boy. On 24 May 1985 the younger boy was brought to the attention of a social worker at St. John's West District as a result of a telephone call from the boy's school counsellor suggesting that the father was unreasonable in his attempts to discipline the younger boy.

Consequent District inquiries and interviews resulted, on 05 June 1985, in the boy being apprehended by a District social worker and placed in a home licensed under subsection 45(2) of The Child Welfare Act, 1972, and being committed by Order of the Unified Family Court Justice on 15 August 1985 to the Director until 23 September 1985 when the younger boy would cease to be a "child" as defined by subparagraph 2(a) of the Act. Commencing 23 September 1985, the boy lived in the Director's extended care until 01 July 1989. Meantime, the boy had no contact with his father or his father's cohabitant.

PROFILE CATEGORY:	Child Welfare/Criminal Investigation
PROFILE NUMBER:	19
PROFILE TITLE:	1974 To 1990
PROFILE EXHIBITS:	C-0502 (unedited Exhibit BBB)
PRINCIPAL RELATED EXHIBITS:	None
RESPONDENTS TO COMPLAINTS EXAMINED:	health care professionals Social Services Justice Constabulary

Child Welfare/Criminal Investigaiton
Profile Number 19

SUMMARY:

Two days after a male child (born 09 June 1974) was admitted to the Janeway on 13 January 1975, for the second time in one month, on this occasion presenting with secondary burns to the abdomen, pin prick puncture wounds of the small of the right foot and some small bruises and scarring from a previous burn of digits of the right hand, a Janeway pediatrician contacted the Director. He, in turn, on 21 January 1975 contacted St. John's District, a social worker from which apprehended the child the same day. The boy, who never resumed living with either parent, was committed to the Director pursuant to a series of Orders by the St. John's Family Court Judge; temporarily from 21 February 1975, and permanently from 03 May 1978.

A request on 29 April 1975 from Justice to the Constabulary to investigate the circumstances of the child's injuries resulted in a written report dated 19 December 1975 - about seven and a-half months later, a time lapse its author, a Constabulary detective, explained in his Inquiry testimony - received by Justice on 24 December 1975. Justice wrote to Social Services on 30 December 1975, advising that the report did not disclose the basis for any criminal charge and expressing the hope the report "may, however, be helpful in determining the matter of wardship."

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From his perspective, the report's author testified, he regarded his role as two-fold: assist St. John's District and, if and when the mother disclosed all she knew regarding the circum-stances of her son's injuries (which never occurred), to criminally charge the person(s) alleged to be responsible.

PROFILE CATEGORY:	Child Welfare/Criminal Investigation
PROFILE NUMBER:	20
PROFILE TITLE:	Response By Social Services, R.C.M.P., Medical Practitioner And Justice To Complaint Of Mistreatment Of Children, 1982
PROFILE EXHIBITS:	Memorandum Of Evidence [44] (dated 30 September 1990)
PRINCIPAL RELATED EXHIBITS:	None
RESPONDENTS TO COMPLAINTS EXAMINED:	Justice
CROSS REFERENCES:	Child Welfare/Criminal Investigation Profile Number 11

Appendix J

Child Welfare/Criminal Investigation
Profile Number 20

SUMMARY:

The report of an R.C.M.P. criminal investigation dated 16 March 1982 into allegations that a parent had physically mistreated his stepdaughter (born 1976) expressed concern about a cottage hospital doctor's refusal to examine the stepdaughter (or her two brothers) on 27 February 1982 (Child Welfare/Criminal Investigation Profile Number 11) because, he said, (a) the incident alleged to have caused the stepdaughter's injuries was two days old, (b) he did not want to get involved in court and (c) he feared repercussions from the stepfather.

The response of Justice, upon receiving the report on 31 March 1982, was two-fold. One Justice solicitor wrote to the R.C.M.P. expressing regret that because the doctor in question was not a Government of Newfoundland and Labrador employee Justice was unable to take any action against him. Another Justice solicitor sent Social Services a copy of the R.C.M.P. report accompanied by a letter stating the report "raises grave concerns of which you should be aware."

PROFILE CATEGORY:	Criminal Investigation
PROFILE NUMBER:	01
PROFILE TITLE:	Royal Newfoundland Constabulary, St. John's, 1989
PROFILE EXHIBITS:	C-0335
PRINCIPAL RELATED EXHIBITS:	None
RESPONDENTS TO COMPLAINTS EXAMINED:	Constabulary

Appendix J

Criminal Investigation Profile Number 01

SUMMARY:

A 16-year-old boy committed permanently to the Director as a juvenile delinquent, while serving at Torbay Youth Centre, St. John's, Newfoundland a sentence of closed custody imposed under the Young Offenders Act, complained on 10 October 1989 to a member of the Constabulary that as a resident of Mount Cashel from 20 March 1983 to 30 September 1984 he was frequently beaten there by Christian Brothers, causing him severe physical injury including loss of several second teeth.

The Constabulary responded by conducting a criminal investigation that failed to locate any witness to the boy's complaints but indicated that the boy's second teeth were in place when he entered Mount Cashel and on 10 October 1989 when he complained. The Constabulary's file on the complaint was closed, without any charges being laid, on 11 December 1989.

PROFILE CATEGORY:	Criminal Investigation
PROFILE NUMBER:	02
PROFILE TITLE:	Royal Newfoundland Constabulary, St. John's, 1990
PROFILE EXHIBITS:	C-0336
PRINCIPAL RELATED EXHIBITS:	None
RESPONDENTS TO COMPLAINTS EXAMINED:	Constabulary
CROSS REFERENCES:	Child Welfare Profile Number 14

Appendix J

Criminal Investigation Profile Number 02

SUMMARY:

In responding to a complaint from a social worker at St. John's West District regarding a 14-year-old boy living in a group home (Child Welfare Profile Number 14) that he had been assaulted by a male teacher in May 1989 the Constabulary identified an additional complaint that in February 1989 he had been assaulted by another male teacher at the same school.

The Constabulary decided against criminal charges because the February 1989 complaint - alleging sexual assault - was not supported by sufficient evidence (a grab was allegedly made for the boy's leg without contact being made with him) and the laying of a charge for the May 1989 complaint - alleging physical assault - was statute-barred as of November 1989, some two months before receipt of that complaint in January 1990 by the Constabulary.

PROFILE CATEGORY: Criminal Investigation

PROFILE NUMBER: 03

PROFILE TITLE: Ronald Hubert Kelly,
Corner Brook, 1979

PROFILE EXHIBITS: C-0337

PRINCIPAL RELATED EXHIBITS:

C-0309 C-0310

C-0340 C-0340A

C-0342 C-0344
(unedited Exhibit U)

C-0370

RESPONDENTS TO COMPLAINTS EXAMINED: R.C.M.P.

Justice

Provincial Court

Social Services

Appendix J

Criminal Investigation Profile Number 03

SUMMARY:

A Roman Catholic priest (born 05 January 1943) was on 15 May 1979 convicted by a Judge sitting at Corner Brook, Newfoundland of having, from 20 August 1977 to 16 April 1979 committed ten criminal offences of indecent assault at De Gras and Cape St. George, two communities about 60 miles to the south, against five male persons who, when offended, ranged in age from 13 to 17 years, for which passing of sentences was suspended and he was made subject to the conditions of a probation Order for two years. Crown appeals against the sentences on 30 November 1979 were, on the same date, dismissed by the Court of Appeal. There was no indication (a) the parents of the five offended male persons, (b) the R.C.M.P. who investigated the criminal offences, (c) either Crown counsel or (d) counsel for the priest, (e) the trial Judge, (f) members of the Roman Catholic church acquainted with the prosecution of the priest, (g) or anyone else familiar with the investigation or prosecution of the priest reported to Social Services the priest's misconduct towards the teenaged male persons.

PROFILE CATEGORY: Criminal Investigation

PROFILE NUMBER: 04

PROFILE TITLE: 1985 To 1986

PROFILE EXHIBITS: Volume 1 - (unedited Exhibit EEE)

Volume 2 - (unedited Exhibit FFF)

Volume 3 - (unedited Exhibit GGG)

Volume 4 - C-0524 (unedited Exhibit HHH)

PRINCIPAL RELATED EXHIBITS: C-0477 C-0479

RESPONDENTS TO COMPLAINTS EXAMINED: Social Services

R.C.M.P.

CROSS REFERENCES: Child Welfare Profile Number 15

Child Welfare/Criminal Investigation Profile Number 13

Appendix J

Criminal Investigation Profile Number 04

SUMMARY:

There resided together in a rural Newfoundland community a family comprised of a father and mother, a daughter, and a son and his wife. Three other sons and their families occupied three adjoining properties. Two of these three sons and their respective wives were licensed to operate their residences as regular foster homes.

Foster Homes 1 and 2. On 10 January 1974, eight and a half months after being licensed, one of the brothers and his wife received into their home (home 1) as a foster child a girl born 05 July 1967 and in the Director's care under a non-ward agreement, who resided with them intermittently until 05 April 1984.

On 24 March 1983 the other licensed brother and his wife received into their home (home 2) a girl born 31 July 1967 and permanently committed to the Director since 20 May 1974, who had previously resided in a foster home where, she alleged, her foster mother and foster mother's visiting brother mistreated her (Child Welfare Profile Number 15). She resided in home 2 until 01 September 1986.

The foster girl in home 1 and the foster girl in home 2 became friends and exchanged concerns about the sexual mistreatment each alleged enduring from their respective foster fathers (in home 1 and home 2).

Foster Home 1. On 05 April 1984, pregnant by her boyfriend, the foster girl in home 1 left there and went to Calgary. Upon returning to Newfoundland on 07 June 1974 she began residing in St. John's where her daughter, L., was born on 10 September 1984 and placed for adoption. Placing L. for adoption necessarily brought the former foster girl into contact with a St. John's District, during which she stated she had been sexually mistreated by her foster father in home 1 (the proprietors of which had, by now, chosen to cease operating).

On 14 August 1985 a rural District received a complaint from a couple to the effect that while recently visiting (what had been) home 1, the husband residing there had sexually abused their three-year-old daughter.

On 16 August 1985 a Social Services representative notified the R.C.M.P. of the two complaints against the same adult male. During resulting criminal investigations, the R.C.M.P. interviewed the former foster girl in September 1985 and January 1986. In June 1986 the R.C.M.P., concluding there was insufficient evidence to swear any criminal charge, closed its files on complaints regarding the three-year-old girl and from the former foster girl.

Foster Home 2. At a camp she attended in the summer of 1986, the foster girl in home 2 confided to a nurse involved in operating the camp that her foster father in home 2 had sexually assaulted her.

On 01 September 1986 the foster girl in home 2 left there. On the several occasions she subsequently returned to fetch her belongings she met two new foster children living there. They were sisters; one born on 09 November 1972 and the other born in 1974.

In July 1988, the nurse who received the confidence in 1986 told a co-worker - a social worker employed at the hospital where the nurse worked - about the allegations of the foster girl who had lived in home 2. The hospital social worker, in turn, informed the appropriate District, one of whose social workers, coincidently, had handled complaints regarding home 1.

On 27 July 1988 the District reported these allegations of sexual abuse in home 2 to the R.C.M.P. which, upon subsequently being provided with the complainant's name, obtained particulars from her on 17 August 1988. At this time, the two sisters the complainant had met in home 2 in 1986 were continuing to reside there.

As of 06 September 1988 the R.C.M.P. had not performed further investigation of the home 2 complaint, and inquiries by the District (including interviews with both foster parents) had not, in the view of its staff, yielded evidence to warrant closing home 2. On that date the older of the two sisters told her foster mother of her ongoing sexual relationship with the foster father. When confronted by the foster mother, the foster father left home. The older sister followed him. A judicial inquiry determined she committed suicide on 07 September 1988 by jumping 50 feet into the ocean near her foster home (home 2).

Responses. In the wake of this foster girl's death, (a) Social Services withdrew the foster licence of the couple in home 2 and (b) the husband of the foster couple was charged by the R.C.M.P. with the criminal offence of sexual assault on the foster girl who left home 2 on 01 September 1986. In February 1990 he was convicted of the offence and sentenced to two years' imprisonment by a Trial Division Justice presiding at Brigus, Newfoundland.

After disclosure at public hearings of this Inquiry of the complaint of the foster girl who had resided in former foster home 1, the husband in that home was also charged with the offence of sexual assault.

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PROFILE CATEGORY:	Criminal Investigation	
PROFILE NUMBER:	05	
PROFILE TITLE:	Allegation Of Obtaining Benefits By False Pretenses Under The Social Assistance Act 1975 To 1977	
PROFILE EXHIBITS:	C-0534 (unedited Exhibit KKK)	
PRINCIPAL RELATED EXHIBITS:	C-0118	C-0181
RESPONDENTS TO COMPLAINTS EXAMINED:	Social Services	

Appendix J

Criminal Investigation Profile Number 05

SUMMARY:

In consequence of a report dated 22 April 1977 by a St. John's District social worker to the St. John's Regional office to the effect a social assistance recipient (mother of nine children) on her caseload may have over the immediately-previous several months received social assistance to which she was not entitled, a special investigator employed by Social Services was tasked on 27 April 1977 by Regional office to make inquiries. His written response dated 28 April 1977 expressed no conclusion regarding the subject he was requested to investigate but stated that "there isn't any doubt of her being gone [from Newfoundland] ... nothing further can be done at the present. Because the police are not carrying her back [to Newfoundland] I do prefer to let that matter rest until she returns if she should." The investigation was not further pursued either then or in July 1982 when social assistance was paid by the District at Harbour Grace, Newfoundland for the mother, four of her children and a male adult unrelated by blood or marriage to her.

A former Minister of Social Services, in his Inquiry testimony, denied having ever known or met with the social assistance recipient who, in her Inquiry testimony, alleged that as Minister he had suggested to her that her interests were best served by leaving Newfoundland to avoid investigation of her entitlement to assistance benefits she was receiving.

PROFILE CATEGORY:	Criminal Investigation	
PROFILE NUMBER:	06	
PROFILE TITLE:	Curtis Academy Fire, St. John's, 1975	
PROFILE EXHIBITS:	- (unedited Exhibit Q)	
PRINCIPAL RELATED EXHIBITS:	C-0233	C-0234
	- (unedited Exhibit R)	
	C-0236	C-0374
RESPONDENTS TO COMPLAINTS EXAMINED:	Constabulary	
	Justice	

Appendix J

Criminal Investigation Profile Number 06

SUMMARY:

Fire on 27 September 1975 destroyed Curtis Academy, a school in St. John's, Newfoundland with a resultant $4-million loss. The Constabulary arrested three female persons - two of them juveniles (that is, under age 17 years) - and charged them with the criminal offence of arson (the two juveniles being charged with the offence as a delinquency). The three accused were released from custody pending further criminal proceedings (the adult having first spent a 30-day period at Waterford Hospital, ordered by a Judge, for examination to determine her mental competence to stand trial).

The Constabulary sent a report dated 09 January 1976 on its investigation of the fire to Justice. The Justice solicitor assigned to prosecute the charges, being dissatisfied with the report, complained feistily on 02 February 1976 by Memorandum to the Minister of Justice who responded on 06 February 1976 by Memorandum to the Chief of the Constabulary. The Minister's Memorandum concluded that

> there has not been adequate investigation ... The suggestion [by the Justice solicitor] that an innocent [adult] person was arrested and subsequently held in custody is very grave .... [and that he understood from the solicitor and

> another Justice solicitor] sufficient evidence is not yet available to allow the Crown to proceed with the cases against [the] two juveniles

and directed the Chief (a) to give the investigation

> top priority until the Crown Prosecutor, or Crown Prosecutors, have been provided with adequate evidence to enable them

to prosecute or otherwise proceed, and (b) in effect, to work in co-operation with the R.C.M.P. in future arson investigations until Constabulary expertise in such investigations otherwise warranted.

Subsequent Constabulary investigation did not produce sufficient additional evidence to warrant prosecution of any of the three persons charged.

PROFILE CATEGORY: Criminal Investigation

PROFILE NUMBER: 07

PROFILE TITLE: "M/V Shirley Blanche"

PROFILE EXHIBITS: C-0265

PRINCIPAL RELATED EXHIBITS: C-0235 C-0236

C-0251 C-0442

C-0443

RESPONDENTS TO COMPLAINTS EXAMINED: R.C.M.P.

Justice

Criminal Investigation Profile Number 07

SUMMARY:

Following default in payment of a mortgage on security of a motor vessel, the mortgage holder sold the motor vessel to two men who, upon legal advice, took possession of the vessel on 20 July 1974. The mortgage defaultor then charged the two men with theft of the motor vessel in a private criminal prosecution. No criminal investigation was ever requested from or performed by the R.C.M.P., the responsible police force. The accused elected trial by judge and jury and, following a preliminary inquiry before a Judge at Lewisporte, were committed to trial.

The effect of the opinions of a Justice solicitor (on 31 January 1975); the Director of Public Prosecutions (on the same date); a student-at-law doing articles in Justice (on 08 July 1976) and the Assistant Deputy Minister of Justice (on 15 September 1976) militated against continuing prosecution of the accused. For his part, the Minister of Justice wrote to the Deputy Minister on 04 February 1975

> "It must be assumed that [the] Magistrate ... would not have committed the accused to stand trial if the evidence taken at the Preliminary Hearing did not indicate a probable cause of action. My filing a nolle prosequi at this time would undoubtedly be interpreted as stopping a case where there is evidence to indicate a crime may have been committed."

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The Director of Public Prosecutions was consistently and steadfastly opposed to continuing the prosecution.

In February 1975, however, the Deputy Minister of Justice instructed the solicitor retained by the mortgage defaultor to undertake the private prosecution (and who, to the Crown's knowledge, may have had a personal pecuniary interest in the motor vessel), to continue with the prosecution on behalf of the Crown. By June 1975 a Justice solicitor carried the Crown brief, preferred the Bill of indictment charging both accused with theft, and offered the Crown's case to a Grand Jury which endorsed "No Bill" on the Indictment, thus bringing further prosecution of both accused to conclusion.

PROFILE CATEGORY: Criminal Investigation

PROFILE NUMBER: 08

PROFILE TITLE: Ms. Gwen Mercer
Relevant Documents

PROFILE EXHIBITS: C-0514 C-0514A

PRINCIPAL RELATED EXHIBITS: C-0513 C-0515

C-0516

RESPONDENTS TO COMPLAINTS EXAMINED: Constabulary

Justice

Appendix J

Criminal Investigation Profile Number 08

SUMMARY:

A female person, born 11 October 1944, was married 20 March 1965, delivered of three children of the marriage, separated from her husband 29 September 1982, and was divorced from him 07 June 1984. Upon her complaint on 10 February 1988, the Constabulary, without any further investigation, arrested her former husband and on 11 February 1988 charged him with having, between 01 January 1965 and 30 September 1982, committed the summary conviction criminal offence of assault against the complainant. The Crown, after correspondence and discussions with counsel for the former husband, withdrew the charge on 05 April 1988 without first notifying the complainant of the Crown's intention to do so.

PROFILE CATEGORY:	Criminal Investigation
PROFILE NUMBER:	09
PROFILE TITLE:	Royal Newfoundland Constabulary - Response To Complaint Regarding Which Complainant Opposed Prosecution, 1989
PROFILE EXHIBITS:	Memorandum Of Evidence [43] (dated 28 September 1990)
PRINCIPAL RELATED EXHIBITS:	None
RESPONDENTS TO COMPLAINTS EXAMINED:	Constabulary

Appendix J

Criminal Investigation Profile Number 09

SUMMARY:

A young person born in 1971, who had been placed in Mount Cashel in 1982 on behalf of the Director, was continuing to live there in the Director's extended care in 1989 when he alleged in a written statement to the Constabulary that for about eight months in 1982 he had been sexually assaulted by another boy - older than him - then living in Mount Cashel in foster care; an allegation he qualified with requests that his allegation not be investigated and that no charges be sworn.

The young person had initially expressed his allegation in 1989 to a Christian Brother at Mount Cashel who informed a social worker then operating from an office at Mount Cashel. She had notified the Constabulary which interviewed the young person.

In deference to the young person, no police report was prepared or sent "through channels" within the Constabulary and no legal advice sought by the Constabulary from Justice regarding the relevance, if any, of the complainant's opposition to investigation and prosecution of the subject of the complaint.

Appendix K

Recommendations Received from Participants and Others, 1990

Appendix K

1. Provincial Advisory Council on the Status of Women:[1]

Education and Training

1. That the Department of Justice conduct, or provide funding to the appropriate agency to conduct well-developed educational programs for members of the police force, Crown attorneys, and judges on the subject of sexual assault, and that these programs include a gender awareness component.

2. That the Department of Justice divide the Criminal Investigation Division of the Royal Newfoundland Constabulary so that a special section be formed to deal with sexual offences, and that the following terms and conditions be met:

   a) that members of this special section be trained intensively and be given regular counselling to deal with the issue of sexual assault;

   b) that members of this special section be restricted to an appointment of two years to limit the effects of stress and burnout which result from being a front line worker;

   c) that the special section be monitored by an external auditor to ensure that biases do not interfere with the delivery of justice.

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[1] Exhibit C-0551.

3. That the Department of Education include in the mandatory health education curriculum information on sexual assault/abuse, and that part of this information address gender awareness and teach boys and girls how to treat each other with respect, and that similar information be included in materials for students in Levels One through Three.

Victim Services and Support

4. That the Provincial Government make long-term commitment to services for survivors of rape, sexual assault and incest throughout the province, and that this commitment take the form of an agency which:

   a) will be funded by the provincial government, but remain at arms length to ensure impartiality'

   b) will be directed by an advisory board with the assistance of an executive director and a team of regional co-ordinators;

   c) will act as a contractor to community groups for the provision of necessary victim support services (including, but not restricted to, sexual assault survivor groups, rape crisis centres, and victim advocates);

   d) will have a mandate and budget for research and public education on sexual abuse and sexual assault.

5. That the Department of Justice collect and publish in an annual report any relevant information on all sexual assault complaints, including:

   a) numbers of initial reports, arrests, convictions, and sentences;

   b) statistical breakdowns of rates of sexual assault, sexual abuse, incest and date rape;

   c) statistical breakdowns according to age, sex, socio-economic status and marital status.

6. That the Department of Justice and the police forces develop guidelines for investigative interviewing of female victims of sexual assault, and that these guidelines include information on victim behaviour and response to trauma, interviewing techniques, and a checklist for collecting important information.

2. Working Group on Child Sexual Abuse:[2]

1. The development of a public awareness campaign on Child Sexual Abuse (its nature and consequences) and the legal issues surrounding reporting.

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[2] Exhibit C-0552.

2. Continued emphasis within the provincial government on developing conjoint policy on responding to child abuse issues.

3. A substantial improvement in the numbers of professionals available to respond, treat, and rehabilitate in this area. This increase in staff must be based on a planning process which considers the needs of all departments dealing with all aspects of abuse (i.e. victims and offenders, training and awareness).

4. The development of adequate provincial victim services within the Department of Justice.

5. An immediate multi-disciplinary review of the potential benefits to children of providing sufficient technical resources to fully implement the provisions of Bill C-15 and the training required to do so.

6. The development of a provincial strategy for dealing with sex offenders from the stages of identification through to relapse prevention.

7. That the provincial government support core funding to organizations whose primary function includes advocacy on behalf of children and protect the continued existence of such organizations.

3. The Interagency Committee on Violence Against Women:[3]

Training and Sensitization

1. That the Department of Justice ensure that each member of the criminal justice system, who could have contact with the victims of a sexual assault or wife assault, have training in the special dynamics of these types of crimes.

2. That the Department of Justice should select some police officers to receive additional training to become specialists in child abuse, sexual assaults and wife assaults.

3. That the Department of Justice solicit input from police officers and other front line workers concerning the kind of training needed and provided for those involved in the delivery of services to victims of violence.

4. That the Department of Justice discuss any change in police policy (especially with regard to child abuse, sexual assault and wife assault) with the police officers who are expected to enforce it.

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[3] Exhibit C-0550.

5. That the Department of Justice ensure that all training and sensitization programs be reviewed regularly with respect to maintaining positive attitudes.

6. That the Department of Justice should have all proposed training vetted by a group of survivors of violence.

7. That the Department of Justice provide supports for police officers who work with victims of violence.

Victim/Witness Services

8. That the Department of Justice ensure that in every part of the justice system crimes against persons should be given priority over crimes against property.

9. That the Department of Justice establish victim\ witness services throughout the province.

10. That the Department of Justice delegate personnel to keep the victim informed.

11. That the Department of Justice delegate personnel to act as advocate for the victim and make the court process more humane.

12. That the Department of Justice ensure that there are enough sensitized crown prosecutors available, and

that there be time allotted to them to meet the witness before the court date.

13. That the Department of Justice provide guidelines to police officers, crown prosecutors, defence lawyers, judges on what are considered unacceptable attitudes towards victims/witnesses.

14. That the Department of Justice take measures to ensure there aren't any unnecessary delays in the judicial process, especially in cases of violent crime committed by someone known to the victim.

15. That the Department of Justice ensure that information on the policies of the police and government departments is readily available and accessible to the community.

16. That Corrections Canada take responsibility for informing victims of the release date of their assailant.

17. That the Department of Justice provide video equipment for each courtroom in the province.

18. That the Government of Newfoundland and Labrador adopt a co-ordinated, multi-disciplined approach with respect to policy planning, training, service delivery and prevention on the issue of violence against women and children.

Prevention

19. That the Department of Justice provide a public education program on violence that places the onus for prevention on potential abusers, not potential victims.

20. That the Department of Education include prevention of violence as an essential part of the core curriculum from kindergarten through post-secondary education.

21. That the Department of Justice and Education ensure that any public education programs designed to prevent violence are honest about risk situations and that these programs employ realistic strategies for dealing with them.

22. That the Department of Justice recognize the importance of consulting regularly and constructively with all those concerned with the issue of violence, and that this consultative process be an integral part of the department's efforts to co-ordinate services that will make prevention of violence more effective.

4. Gwen Mercer

1. That all professionals and care givers working with and caring for victims of abuse at present, be specifically trained immediately by especially

trained abuse counsellors, and that all others be trained prior to taking the positions.

2. That a special abuse unit be set up by the police forces sufficiently staffed by especially trained investigators in all forms of abuse.

3. That a victim court worker, specially trained in abuse trauma and flashbacks, court jargon and legal tactics be assigned to each victim, accompanying the victim in the court room and remaining consistently assigned to the case to its conclusion.

4. That a screen be permitted in the court room blocking visual contact between the victim and the abuser while testifying but maintaining full vision for all parties for the judge.

5. That there be specialty training for sexual abuse specifically for persons on staff within the special abuse unit of the police forces and at the court.

6. That judges and lawyers be given sensitized education on abuse trauma, flashbacks and post crisis syndrome to better enable each case to be humanely as well as justly heard for both the abuser and the victim.

7. That all forms of abuse be acknowledged including physical, mental, emotional, nutritional, sexual, financial and subtle street abuse, and that

appropriate remuneration and sentencing be awarded to the victim.

8. That there be a referral system set up from the victim court worker to access the appropriately trained in all forms of abuse, a psychologist and support networks such as Alcoholics Anonymous, Alateen, Alanon, Adult Children of Alcoholics, and Canadian Association for Separated, Divorced and Widowed Catholics that all provide structured programs for healing and not socializing.

9. That one investigator from the special abuse unit of the police force be assigned exclusively to each victim to establish a trust base to interview alone in the room with the victim, but to have behind a privacy window in another room where the interview can be heard and seen, the psychologist specialized in all abuse forms and assigned on twenty-four hour access to the special abuse unit, and the mental health victim support worker that will proceed to court if necessary and also on call twenty-four hours.

10. That adequate video equipment and anatomically correct dolls be supplied to the special abuse unit of the police forces for specialized use by a specialty abuse trained psychologist only.

11. That mental health victim support workers be placed on staff to work jointly with the police forces and the court on twenty-four hour basis.

12. That a specialty trained in abuse psychologist be placed on staff to work jointly with the police forces and the courts on a twenty-four hour call basis to assist victims and officers to prevent burnout.

13. That the psychologist interview the victim of abuse on video after the initial police interview to prevent mental blocking by the victim of critical information, and that the psychologist be considered the prime interviewer but working corroboratively with the specialty investigator and the mental health support worker.

14. That more promotion be given by police, lawyers, courts, hospital emergency and psychiatric units, doctors, schools and the media concerning the availability and success rate of the self-help support groups such as CASDWC, ACOA, AA, ALATEEN, ALANON, in reference to the healing process for victims.

15. That more indepth investigation must be requested by Crown attorneys before throwing out a case labelled 'insufficient' evidence.

16. That more positions be allocated to speed up the investigative processes necessary before proceeding to court in the areas of police abuse unit, victim mental health court workers, Crown attorneys and judges.

17. That victim's stories be given credibility and sensitized advocacy by police and judges.

18. That a victim's advocacy agency be set up to ensure that appropriate action by the system and the public has been executed expediously.

19. That the police officer taking the original and subsequent complaints from the victim so as to enable appropriate flexible charges to be laid, enabling the Crown to apply 'reasonable doubt' for the victim as equally as for the alleged perpetrator.

20. That police officers be prohibited from prejudging each complaint of abuse as to its ability to stand up in court so as to permit the victim reasonable doubt and the right to fight in court for its own justice with the assistance of the victim support worker; thereby enabling the judge to witness and evaluate all behaviours put before him.

21. That Legal Aid be an independent body separate from government and lawyers with outside interests that may conflict with financially qualified applicants interests, enabling a victim of abuse or any other applicant to seek justice without fear of cover up or indiscriminate, discretionary power or prosecutorial discretion.

22. That there be included in the mandate of the victim's advocacy agency investigatory powers to monitor

proper and just behaviour of all professionals, authority figures and government ministers and executives.

23. That a separate court be established for abuse cases to reduce the lengthy delays between court appearances and final decisions, the court being adequately staffed with consistent judges and victim mental health court workers so as to promote trust, specialized in abuse and adequate relief of the staff to prevent burnout.

24. That the fee structure for Legal Aid lawyers for services rendered to victims be issued from this separate specialty court (as above) paid from the Crimes Compensation Board.

25. That more education and awareness of the process of law and legal access be given commencing from kindergarten to the secondary school system and public service messages, enabling such information so accessible that it become common knowledge for all people.

26. That all lawyers refrain from delaying immediate action both privately and in court where abuse cases are a consideration.

27. That all abuse cases be heard initially within twenty-four hours of the arrest and that each case be completed within thirty days.

28. That a universal Canadian license and permission to practice law be implemented countering the necessity to qualify provincially to give service, and that access be given thusly to any documentation necessary for the courts or final ruling of a case.

29. That cases of abuse fall under the jurisdiction of mental health and justice rather than social services. Abuse is a health problem resulting from criminal acts. Social services should be merely involved within their mandate such as assisting the victim to find adequate food, shelter and clothing.

30. That the Child Welfare Act be mandated under the supervision and responsibility of the departments of Justice, Health, Education and Social Services jointly as a speciality unit so as to remove so much power from one person being mandated; and that all cases of abuse be forwarded by this unit to each of their respective Ministers to monitor appropriate action.

31. That there be a position allocated within the police forces for an on staff lawyer, accessible at all times when laying charges in abuse cases.

32. That there be a police commission set up to monitor police activity both internally and externally for the public; and to be used in the event when indecision occurs between police and justice regarding the laying of appropriate charges. This commission is to be an independent body from police and Justice.

33. That the statute of limitations be dropped in abuse cases.

34. That the client/solicitor privilege be considered as being prohibitive when full disclosure in an abuse case is barred from being heard thus disallowing full justice for the victim versus the perpetrator; and that the privilege, abuse, be seen as aiding and abetting causing obstruction.

35. That all child abuse cases be reported initially to police special abuse unit for consistency, where the psychologist and victim mental health court worker are also brought in on the case, and then reported to the Child Welfare Act unit described earlier; all to be done within twenty-four hours and where appropriate counselling and support networks can be implemented for the victim by referral immediately in an interdisciplinary team approach for the victim not the system.

36. That the concept of Youth Place and Hotline be funded and implemented immediately as public awareness, educational, preventative and curative program for runaways, drop outs, youth addictions, child prostitution and suicide attempts as a result of child abuse.

37. That a step by step written policy be implemented describing the exact procedures to be taken in all abuse cases and a course on acting humanely toward

a victim of abuse; that this exacting procedure begin with how to detect the abusive acts, to the actual reporting of abuse and to whom the procedure in getting it into court, the hearing, court process and what to do with the victim impact and street abuse and consequent breeches of the court orders, and the need for counselling by support networks.

38. That all clergy be educated and sensitized about abuse detection, the dysfunctional behaviour, co-dependent behaviour and the impact left on victims so that more realistic counselling may be given when victims seek their guidance and God's forgiveness for breaking the marriage vows and that clergy be made more aware of the proper referral for counselling from support groups.

39. That a screening process be set up by each organization that hires professionals, care givers, and people in positions of trust that will delve into the family history to the level of grandparents to rule out paedophilia, addictions and any other abuse related activity to prevent further abusive acts; and that this same screening be done for premarital counselling which may also include functional attitudes in money 'street' management, relationship compatibility and functional caring for children.

40. That Ministers in government and their deputys be trained as soon as they take office about the total functions and responsibilities of their departments

preventing poor communication within the ranks and abuse of power by the lower ranks; and that ministers take full power by implementing necessary changes to enhance the system rather than demonstrate inaction and non-advocacy which may contribute to negligence and abuse at subsequent time.

41. That the victim's independent advocacy agency be the 'watchdog' for any inappropriate activity by the government members or their representatives.

42. That the Chief of police be mandated with the sole authority for the police force answerable to the police commission rather than the Justice department.

43. That the department of social services be reduced in size, decentralized and broken down into other jurisdictions staffed on a yearly renewable contract basis by appropriately trained professionals with their own individualized mandates, but to include liaisons for the purposes of inter communications with the existent community resources and the allocated Ministers.

44. That layman's language be used by all professionals and street people when presenting evidence before a court of law to prevent misunderstanding and improper judgements; and that judgements be written in layman's language to remove any doubt to all concerned so as to enhance quality of life.

45. That adequate court preparations such as orientation to the court room and court times and delays be done for all victims of abuse, youth or adult, by the mental health victim court worker and that the victim and the perpetrator be given separate waiting areas and counselling privacy with confidentiality.

46. That all court assigned assessment of families be kept from access of the perpetrator to prevent attempts by the perpetrator to infiltrate any areas that may be perceived as being the victim's vulnerability.

47. That there be more definite wording done by the court when ruling on bonds used for the protection of victims when being threatened or harassed by the abuser.

48. That abuse be classified as a criminal offense and have criminal status not civil status.

49. That failure to act to stop an abusive act by any professional, person in a position of trust and/or lay person is considered as contributing to the abuse an in trying to keep the peace with the dysfunctional abusive act and/or behaviour is committing a criminal offense punishable without being statute barred and to the full extent of the crime with sentence.

50. That more extensive investigation be done into someone who has been labelled an alcoholic or drug addict to discover if the erratic behaviour is chemical induced or causative through a basic dysfunctional personality so as to enable more indepth counselling, research and consequent prevention of dysfunctional based abusive acts.

51. That the police, Crown attorneys, judges and lawyers and the courts acknowledge financial abuse, subtle abuse on the street or behind private family doors, and mental/emotional abuse as equally significant forms of abuse as is physical and sexual abuse, when laying information for charges and arrests and when judgements are handed down for sentencing, conviction and remuneration for the victim.

52. That existing laws be better interpreted when cases of abuse are heard in court and that new laws be drafted to reflect the severity of abuse acknowledging all forms of abuse.

53. That Exhibit C-0603 be revised and redrafted to reflect the law rather than philosophy.

54. That the Divorce agreement as stated in Exhibit C-0514, page 1 be properly enforced rather than maintain its present inactive status.

55. That the status of the Divorce Act for Family Law be placed in law to reflect criminal status where

cases of abuse are involved and incompatibility, when attempting to deal with a dysfunctional personality, be investigated to rule out abuse before giving final ruling for visitation.

56. That in the cases where abuse is suspected in separation and divorce cases, there be no future attempts to enter into private agreement or private contract by social workers for the perpetrator to visit or have contact with the victim, children or spouse, as in Exhibit C-0458, page 134; and that all parties be protected under a well delineated bond for the protection of all.

57. That access by phone by the abuser to the victim children or spouse or Foster/Group Home set-up, be prohibited.

58. That custody of the victim children must not be given to the abusive parent because that parent has remarried or is demonstrating financial stability more so than the unmarried and/or less financially stable non-abusive parent.

59. That the alleged perpetrator be removed from the scene within twenty-four hours of the report of abuse and that the victims be permitted to remain in their own familiar surroundings.

60. That the alleged perpetrator be held in the lockup until the first appearance and then be transferred to a residential detention home until case has been given

final ruling; thusly eliminating the practise of punishing the victim instead by placing a child and/or non-abusive parent in Foster/Group or Transitional homes to live, leaving the abusive parent to live in the marital home or free to live elsewhere to continue the abusive acts on the street, subtly.

61. That the laying of charges be the responsibility of the police rather than that of the victim so as to offset further abuse to the victim by the abuser in either the 'honeymoon' stage or in the violent stage for punishment for exposure of the abuser; and to aid the victim to be more assertive when attempting to overcome the co-dependent stage of ownership of the victim by the abuser.

62. That all complaints of suspected abuse be taken whether it be from the victim source or from a third party who may be acting as an advocate for a weakened victim.

63. That more secure detention centres be created for alleged perpetrators for the purposes of holding over for trial or for further investigation as opposed to attempting to create more placements for victims of abuse.

64. That the alleged perpetrator be prohibited from returning to the home of the victims, after the initial complaint or arrest and subsequent apprehension of

the perpetrator, so as to prevent further compromise to life for all concerned.

65. That more detention centres for alleged perpetrators be created with specialty trained mental health counsellors on staff well versed in abuse/dysfunctional behaviour and management; to be operated through funding and counselling through the departments of Health and Justice rather than social services.

66. That more detention centres be created with a specialty program for retraining, detox and behaviour modification in a well controlled environmental setting mandated by law to be run by the departments of Justice and Health, including staff well qualified for rehabilitation such as dysfunction behaviourial psychologists and mental health professionals.

67. That agencies mandated to assist victims of abuse be given more power and training in advocacy to fight an abusive system or family without being at risk of losing government funding to operate.

68. That labels placed on victims of abuse such as 'rough and tough family', 'simple-minded mother', 'slow learner' in school may be reflective of that person being previously battered into submission by the abuser and is now too weak to fight for itself and it may further demonstrate the strain of the survival of the warped paranoic thinking of a dysfunctional

abusive personality for many combined twenty-four periods of time where there was no help obtained because of disbelief by the system or well meaning friends and family; thusly these labels must be dropped and the victims be given immediate advocacy assistance and retribution.

69. That the 'hanging tough' policy of social workers be eliminated in that it aggravates and badgers the abuser making it a more volatile environment in which the victim attempts to survive; also the act invades the privacy of the victim especially when it is done over a long period of time.

70. That the alleged perpetrator be removed from the victim's place of living before the weekend approaches so as to prevent further abusive acts upon the victim during the weekend, when facts have been presented to prove that abuse is more prevalent on holidays and weekends either because there is an increase in chemical consumption by the dysfunctional personality and/or abuser and the availability of the victims having vacated structural controls such as school, etc.

71. That there be more emergency twenty-four hour on call mental health professionals and special abuse unit police allocated to include the weekends and holidays, when there are no inhibitors and behaviours are more relaxed contributing to the increase of abusive incidents, so as to enable

immediate protection and apprehension of the perpetrator.

72. That there be twenty-four hour access to social workers for the purposes of providing food and shelter to victims of abuse, running from their assailant after business working hours; and to provide emergency access to single parents with young children for food and medical supplies which could not be obtained during regular working hours because of the unavailability of any social workers despite the many efforts from Monday to Friday to obtain one; and that it be acknowledged that one social worker with a beeper is inadequate to provide critical emergency services after hours, thereby allocating more funds for more workers with beepers that are accessible immediately.

73. That there be more consistency in assignment of the same social worker to one victim of abuse to enable the development of appropriate and expedient resolve of each victims needs; and that it be so assigned that it will prevent further abuse to each victim in its constant repetition of the abuse stories in an attempt to obtain aide for food, shelter and clothing.

74. That there be provided to the children of single parents coming from dysfunctional environments, homemaker and daycare and/or babysitting services aimed at providing specialty trained care givers who understand the confused behaviours of abused

children while in the healing process; thus enabling the single parent to work outside the home reassured that the children are in a protective, empathetic, healing environment with a reduction of stress both on the child (who may fear abandonment by the surviving parent's absence) and on the parent (who fears the street abuse of the child by the abuser parent).

75. That a specialty trained, sensitive-to-abuse babysitting service be provided to single parents twice weekly to enable the parent to attend to personal needs of the family such as groceries and recreation time, thus eliminating confinement from the outside world causing isolation and depression due to lack of educational and recreational stimulation.

76. That it be acknowledged by prosecutors, defense lawyers, police and judges that the victim has a misplaced love for the abusive parent or guardian, in that it only sees the craved for but never-to-be-gotten love of the abusive parent, and cannot lay charges in the hope that that parent or spouse or significant other may sometime give the love so craved; thus out of kindness to the victim, charges must be laid by the police to enable rehabilitation of all concerned.

77. That the Child Welfare Act, Section 49 be amended to include that there must be action to remove the

abuser from the victim within twenty-four hours of the initial complaint of abuse.

78. That management of human services must be done on an individual basis, not generalized or universal policy.

79. That intake be eliminated by Social Services department in that it is non-confidential, inhumane, counterproductive, dehumanizing, demoralizing, belittling and abusive.

80. That social workers be seen by appointment only and not on a wait in line for hours in an overcrowded room deal.

81. That each appointment time with a social worker be honoured by both parties with respect and with professionalism on the part of the social worker.

82. That where transportation is a problem for the victim of abuse and/or single surviving parent, the consistently assigned to the case social worker either visit the person in need of assistance or transportation be provided to and from the social workers office at the scheduled time.

83. That there be appropriate sections put in place for those receiving financial assistance from the Social Services Department that will provide more confidential handling of each case, instead of the present system which herds a person like cattle

into a room full of all social problems from dysfunctionals to functionals, and where youth are made to witness along with the abused survivor/victim so much added depersonalization; thus these divisions will provide mini departments within the department with their own classifications of recipients.

84. That more money be allocated to provide more mental health professionals on a private practitioner basis so as to give victims access to private confidential counselling free of charge; each practitioner to be licensed by the Department of Health and funded by the same.

85. That there be uniformity in training of new skills and educational fields within the profession from the top ranks to the front lines.

86. That people chosen for positions of leadership within the professions, especially those dealing with human responsibility, be qualified not only academically, but have a complete knowledge, experience and background of the front lines and the 'street', and certainly without exclusion, coming from functional ancestry.

87. That this commission's recommendations be mandated by law.

88. That a public inquiry be conducted into the abuse by government of our homeowners and subsequently

our dependent and vulnerable young adults and senior citizens. This must include investigation into placement tactics by social workers in off hours to hide patients who are inappropriately placed in private nursing homes, special care homes, foster homes and group homes as well as some unlicensed and licensed boarding homes.

89. That there be an assertive mandate to implement Section 102 of the Criminal Code of Canada when failing to do the job as assigned so as to endeavour to promote workers in the area and/or the field to report negligence or be considered part of it, and to eliminate the excuse that heavy workloads are the main reason to hide behind for lack of assertive and accountable advocacy for vulnerable people.

90. That the practise of hiring social workers by private Boards be considered as conflict of interest for the advocacy and protection of the residents or patients when suggestions of improper care are initiated for investigation into the place.

91. That the practise of apprehending children from their own abusive environments be stopped and the perpetrators removed instead; and that just because it is easier to remove the child (for the system), does not mean that it places the child away from abuse. Therefore, be it acknowledged and acted upon that child apprehension causes double victimization and punishment for acts not committed by the child.

92. That post crisis syndrome be classified as life threatening for victims and treated thusly by all professionals immediately.

93. That financial compensation be awarded to victims to accommodate loss of opportunity to develop to their full potential in education, work and in creative needs, for their loss of functional childhood development and their loss of time and money in rehabilitation and healing.

94. That victims of abuse be consulted when setting up training and rehabilitation programs so that these will be effective on an individual basis rather than done in a generalized impersonal and possibly ineffective way.

95. That maintenance payments settled in judgement be collected and dispersed by the court, so as to assist the abused from further contact with the perpetrator.

96. That financial counselling re: reality living and single parent living be done through the court process by specialty trained in abuse impact counsellor, who understands the mourning process financial needs.

97. That credit restoration be granted to victims who have been financially abused by extortion within a dysfunctional setting and/or abusive marriage; and that safeguards be implemented after settlements and final judgements re: matrimonial property and

disbursements, bad debts paid off, and bad credit rating forgiven so as to prevent future loss of credit rating, causative of breakdown in these judgements again.

98. That financial counselling and monitoring be done by the court process for a ceiling of two years to enable victim/survivor stability and to gain substantiated data toward research for future programs and safeguards.

99. That victims of abuse be financially supported through the Crimes Compensation Board funding rather than through the department of social services welfare department and that each case be treated individually re: needs, not generally as an impersonal commodity, reducing the compounding of financial abuse.

100. That it be part of the court process to refer victims of abuse to not only various support groups and counsellors, but also to the Crimes Compensation Board for access to application for funds.

101. That the terms of payment and classification of types of crimes and victims to be compensated, be broadened to include those who have been victimized by subtle street abuse, mental abuse, sexual abuse and financial abuse; and that children be compensated for loss of potential in maturity, education, self esteem and creativity caused by preoccupation and depression.

102. That victims of abuse shall be assisted and monitored through the justice system at court legally, financially and rehabilitatively and not through Social Services jurisdiction.

103. That victims of abuse be monitored while receiving counselling through the court process for over medication by prescription drugs.

104. That within twenty-four hours of becoming homeless as a runaway victim of abuse, reputable shelter, food, clothing, protection, safety and believability be given each victim in crisis and, as part of the rehabilitative process, and crisis intervention by police, social workers and the courts, each victim be referred immediately to the court process of the mental health victim support worker for counselling for psychological, financial and legal needs within that same twenty-four hours to keep them off the 'street'.

105. That funds paid to victims of abuse from the Crimes Compensation Board through court process referral shall be paid to each victim for a ceiling period of two years at which time, or as deemed necessary by the court financial advisors before that ceiling of expiry, receipt of funds shall be paid by the department of Social Services to that victim if lump sum payment for compensation has not been allotted otherwise.

106. That all victims of abuse be treated with respect rather than a number by the department of Social Services and that they not be treated with contempt or disbelief.

107. That the proposed youth place and hotline with its program be implemented (program not included with present proposal).

108. That more indepth investigation into a family be done when a youth becomes a runaway and 'homeless' by choice.

109. That 'homeless' youth and those caught in the gap of the system between the ages of sixteen to eighteen years of age be granted independent status and be treated with their own guidelines and policies excluded from the status of Child Welfare and of an adult under social assistance, but including portions of same that are applicable to each, but general, needs.

110. That extended care be awarded to only those cases who need consistency in their present financial and educational continuance and not a change in responsibility or lifestyle.

111. That extended care be automatically extended in the above case instead of having delays and interruptions of lifestyle and education for its approval.

112. That since institutionalization renders a person dependent and discourages that person from taking responsibility for its life, and since foster/group homes confine independent persons from their responsible freedom, and since many boarding homes are inappropriate for functional independent youth (e.g. housing alcoholics and/or ex-inmates), independent living with independent status be given to both 'homeless by choice' youth and those between the ages of sixteen to eighteen who request it either in writing or verbally.

113. That independent status and living include that a youth can not be arrested on behalf of the parents for running away and then brought to the abusive parents home for that youth to be abused again; that the youth be given residence living quarters with the concept of housemother to ensure that the environment is conducive to study and free of drugs or alcohol; that a program of rehabilitation be mandated to prevent seeding abusers and done by a mental health professional; that the youth does not have to utilize the welfare system to be granted status; that the youth be given signing power for its own utilities, own rental contract, and own medical permission; that money allotments be given from the Crimes Compensation Board, if the youth is not working, to permit that youth to stay in school; that each youth be taught by the housemother how to be responsible with paying bills, purchasing clothing and food, and rebuilding self esteem and to assist that youth to make educated choices about choosing

a career and where to get proper training; that the youth learn to live interdependently within the community.

114. That money which would have been paid out for possibly years to welfare recipients who are single parents and victims of abuse be transferred to the Crimes Compensation Board for controlled disbursement thus alleviating needless long term spending from Social Services pocket for years; the rehabilitation program from the court process for victims of abuse will eventually in a ceiling of two years help that victim to be an independent survivor having settled with the Board for damages.

115. That long term housing be provided for victims of abuse and single parents on a fixed rental amount each month and not done by percentage of monthly income; thus eliminating incentive not to get higher paying job for fear of having to pay higher rent; thus enabling transitional homes to be shelters (not long term homes because there is no alternative long term housing for placement away from transitional home).

116. That suitable long term housing be provided to those single parents who were forced into having large families either by the church or by rape from husband. This will prevent the 'jungle effect' living conditions which seeds violence and law breaking; and that those receiving such housing be

mandated by the court process of rehabilitation to enter that counselling plan.

117. That it be considered as contributing to abuse that insufficient social services welfare payments are paid to victims of abuse and single parents; and that guidelines, policies, and rules be so enhanced to permit those individuals given long term assistance, if the court process rehabilitation plan has been completed, to attain the basic standard of living.

118. That more extensive follow-up be done by diversion to ensure that each youth has been directed toward a structured program of counselling and rehabilitation for self esteem building, and provided with education and recreation to enable responsible choices.

119. That a massive educational publicity be implemented that will teach people by role play (somewhat similar to the Mormon ads) about self esteem, self value, how to report abuse to police, how to react to belittlement constructively, what our human rights are, and how to access appropriate legal counsel for abuse by influential people who feel they are above the law.

120. That there be mandatory courses given by all schools without charge from kindergarten to post secondary levels on the following topics (then if the parents do not know these things, the youths will):
    (a) self esteem building

(b) self work and values
(c) daily living skills
(d) relationship building
(e) interpersonal family building and self respect
(f) aptitude skills testing for career preparation
(g) reality daily money management
(h) 'street reality'
(i) human rights
(j) legal rights
(k) abuse and healing
(l) adapting what is learned in curriculum to reality living
(m) elimination of 'slow learner' label
(n) introduction of gifted children method of teaching
(o) improved method of teaching math
(p) transitional teaching of life reality for career and responsible living interdependently within the community before leaving grade twelve.

121. That there be implemented in grades ten, eleven and twelve a course in psychology which will include books of historical nature to describe methods of survival of our ancestry and self help books that teach the basics of functional living, such as recommended by Gwen Mercer.

122. That service units for abuse victims remain so labelled so as to identify blatantly what the service unit is working for, rather than identifying a lifetime of hurt with police, subtle names whenever the

system feels uncomfortable with its job of ignoring abuse victims.

123. That professionals and care givers be screened when treating abuse victims, especially if from a culture whose social values differ from those of the victim (in some countries it is acceptable for males to beat their wives and to have sex with children).

124. That home correspondence programs be offered to those single parents who have been emotionally disabled by abuse and cannot leave their homes temporality due to crisis, but who are able to take advantage of educational upgrading to prepare them for future independence and development.

125. That funds be set aside for teaching those who are illiterate in Newfoundland to learn what their human rights are and to value themselves enough so as to be equally provided for so they no longer fear being assertive and their own self advocates to achieve their own basic needs.

126. That the interdenominational system be introduced to prevent further inappropriate spending and false religious self values.

127. That 'prosecutorial discretion' be discouraged when the question of protecting position, money and religion are the influence; that the unlawful or dysfunctional abusive act be judged along with the behaviour rather than the individual or institute.

128. That 'prosecutorial discretion' used to get a volatile situation 'out of our hair' as John Kelly testified, or to have the Brother 'silenced', be considered as contributing to the abuse by aiding and abetting the perpetrator, so therefore considered a crime.

129. That it be considered neglect by the system and contributing to abuse by failing to act when 'discretion' is used when the system is glad to rid of anyone who poses a problem, when that person suggests leaving the province because it has been made too abusive to stay due to the system's inaction; and that the system nor the abuse victim take no further action because it has all become too cumbersome and wearing on everyone to pursue it anymore.

130. That sentence duration be revised to reflect the seriousness of the crime of abuse when the impact stays for a lifetime with each victim and for each repeated act of abuse done to the victim.

131. That since a dysfunctional abuser can appear very remorseful and superficially caring when before the judge in court and that that same person can display such remarkably convincing self condemnation for its abusive acts, be it so deemed that conditional discharges and probation with no counselling or justice confinements, be discontinued and more reflective judgements of the crime of abuse be handed down.

132. That there be a program of sex education in the schools and by the media to promote self values and respect of others re: forcing a female to have sex by either gratitude for an evening of entertainment or out of guilt for not giving something for an evening out (better labelled as date rape) and that it be so deemed as a criminal offence to coherse and blackmail the victim, male or female, into having sex against one's will.

133. That Supreme Court Judges be elected every three years rather than be given a lifetime tenor enabling better awareness of the evolvement of societal changes, so ruling to reflect same.

134. That the conflicting positions of Minister of Justice and the Attorney General be mandated to cease and that these positions be effected by two people (male or female).

135. That better conditions and salaries be implemented for those professionals who are so aware and educated to the point whereby they have more than gone the extra mile to assist and protect the victim of abuse, but who have been abused by the system for doing so and that the issue of 'head hunters' be evaluated immediately so as to prevent further loss of our professionals to outside provinces and countries because they are tired of the lack of appreciation and caring given to them by this dysfunctional system.

5. **John W. McGrath:**[4]

   1. No information involving an indictable or dual offence be sworn to without examination and discussion with a Crown Prosecutor.

   2. Part time prosecutors with less than five (5) years of criminal law experience be prohibited from acting as agents on behalf of the Attorney General Department.

6. **Wayne Dymond**:[5]

   1. That the Provincial Department of Justice, immediately abolish the use of police agents as prosecutors on all dual and summary conviction offences under the Criminal Code and more serious provincial offences.

   2. That the Attorney Generals Department minimize the use of private agents and only use them on an emergency basis so as to allow the appearance of prosecutorial independence to come forward.

   3. That the Department of Justice enact legislation governing the role and scope of the duties of the

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[4] Exhibit C-0546.

[5] Exhibit C-0547.

Crown Attorney pursuant to a new Crown Attorneys Act.

4. That there be put into place a standardized process for discovery and guidelines pursuant to the Crown Attorneys Act so as to outline the full discovery process to allow defence counsel to be provided with copies of all witness statements, with the right of the prosecution to edit statements relating to informants and other sensitive areas in the same manner as trial judges on wiretap applications.

5. That all charges of a dual nature or of an indictable nature be screened by a crown attorney before the charge is laid before a justice of the peace. The review process may result in unfounded charges being removed and persons not having to incur unnecessary legal costs where charges are not warranted.

7. Canadian Mental Health Association:[6]

Service Delivery

1. The department of social services must increase the number of social workers so that they will be able to manage their caseload effectively and will be able to respond to the needs of victims and their families quickly and with sensitivity.

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[6] Exhibit C-0543.

2. For those children and young people experiencing abuse who must leave their homes for their own protection, the Department of Social Services should develop a range of alternate living arrangements that provide a supportive environment specific to individual and age-appropriate needs. This will mean an allocation of funds as well as on-going support and training for these care providers.

3. The Department of Social Services should increase permanent funding to existing community agencies which provide services to women and children victimized by violence. These include emergency shelters, counselling and follow-up services, Rape Crisis centres, and Women's Centres. In addition, there are many communities which lack these essential services. An effort should be made to assess the gaps and allocate funding as needed.

4. Sex offenders frequently begin their pattern of sexual abuse as adolescents. The Department of Social Services (Youth Corrections) must provide specialized treatment programs for adolescents who have been convicted of sex offenses.

5. The Department of Health must provide adequate funding to existing health services throughout the province so that they can provide appropriate social and psychological intervention to victims and families in cases of abuse.

6. The Canadian Mental Health Association strongly supports the development of province-wide community-based and board operated mental health services. These services must be available for children and their families as well as for adults. The Department of Health must allocate funds for this development so that victims and survivors will have access to adequate treatment that will meet their individual needs.

7. The Department of Education must review its allocation ratio (currently 1000:1) of counsellors in the school system. A lower ratio is essential in order for children to have access to counselling in the schools.

8. Funds must be allocated through the Department of Justice for the development of Victim Services to provide crisis counselling, referral, support and advocacy for victims and families who are dealing with the justice system.

9. The Department of Justice must develop treatment services for convicted offenders both in custody and upon their release. These services could be connected to existing organizations such as the John Howard Society and Emmanuel House. These treatment services must be developed in coordination with the services delivered to victims and their families.

Training

10. Memorial University must take responsibility for evaluating the existing professional training that prepares students for working with victims of violence in the disciplines of medicine, nursing, social worker, psychology and education.

11. The Department of Justice must evaluate the training of police forces in Newfoundland and Labrador with particular emphasis on the role of police in the investigation of cases of child sexual abuse.

12. The Judiciary should take responsibility for ensuring their education about the dynamics and impact of violence on victims with particular respect to child victims.

13. The Department of Justice, Health, Social Services and Education should develop and promote ongoing staff training in the area of child abuse for their professional staff at all levels.

14. The Provincial Government should ensure that those appointed to positions of authority regarding children be appropriately qualified.

Coordination

15. In order to provide effective service to victims, families and offenders, inter-departmental and inter-

agency coordination is essential at all levels of service delivery. The Departments of Health, Social Services, Education and Justice should evaluate the effectiveness of the existing inter-departmental committees and allocate resources so that these committees can implement their own recommendations, and so that the departments can have adequate representation on the inter-agency committees.

Public and Community Education

16. The Department of Education must ensure that school curriculums include, not only personal safety programs, but on-going education on sexuality and personal relationships.

17. It is not enough for the schools to provide programs that teach personal safety because children often do not have the power to keep themselves safe from abuse. The general public must be educated about the nature of abuse, appropriate responses to abusive situations over and above the responsibility to report, and the need for treatment and prevention strategies. The Departments of Education, Social Services, Health and Justice must work together with community agencies to develop a long-term, comprehensive education approach, using multi-media techniques. Education must be aimed at reducing victim stigma and must emphasize the community's responsibility for stopping abuse.

Accountability

We recommend:

18. That the Hughes Commission identify the specific departments and organizations, and the positions within these, responsible for action on the above recommendations and others made by community groups.

19. That the mandate for action include required Public Forum follow-up on progress towards implementation of the recommendations, at one year, three year and five year intervals. It is crucial that the accountability for action be held in public, so that the general community can be assured that the progress towards goals is steady and intentional.

8. **The St. John's Status of Women Council:**[7]

    1. The practise of removing the victim from the home should be eliminated. Instead, a policy be established whereby the assailant is removed from the home and expressly forbidden to return while the incident is being investigated.

    2. Officials in the legal system, i.e. police officers, lawyers, court judges, etc., should be required to

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[7] Exhibit C-0544.

participate in an extensive and indepth training program on the issue of sexual, physical and emotional abuse of women and children and the cycle of violence.

3. The inequalities of gender in the legal system be addressed immediately by speeding up affirmative action programs to reach the needed goal of equal representation of women in the legal system.

4. The length of time it takes for cases involving personal injury to finally reach the courts is a major cause of non-reporting by victims of abuse. These cases must be given priority and the actual court process be speeded up.

9. **Newfoundland Association of Social Workers:**[8]

1. That the government of Newfoundland act with dispatch to enable the Newfoundland Association of Social Workers to exercise control over the title "social worker" and social work practice.

2. That government departmental guidelines confirm a commitment to ensure that social work clinical decisions and plans for care (in the best interest of the child) are not subordinated to the expediencies of bureaucratic or political decision standards.

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[8] Exhibit C-0545.

3. That government departmental guidelines confirm a commitment to supporting professional autonomy in clinical decision making and in professional action.

4. That the decision-making structure, as designed by the departments of government that employ social workers, ensure that the highest level of social work clinical decision is made by a senior social worker.

5. That non-social worker managers have clear direction to not take responsibility for either clinical social work judgements or clinical intervention decisions.

6. With the introduction of control of title, that the government take no action, such as declassification or reclassification, that would allow non-social workers to occupy a non-social work position, while carrying out social work duties such as psychosocial assessment, investigations or psychosocial counselling and therapy.

7. That the government expand its support for untrained workers and the school of social work in the interest of upgrading all those who are acting in social work roles, to enable them to qualify for the title "social worker" and to practice as social workers.

8. That the government and the department of social services establish a clear policy that the minimum

qualification required to carry out social work responsibilities be that of a B.S.W.

9. That the government and the department of social services expand their support for untrained social service staff for whom the completion of a B.S.W. would facilitate the improvement of services to the public.

10. That the government and the department of social services expand their support for the school of social work at Memorial University, in order that it may increase its service to those untrained workers needing upgrading.

11. That the department of social services recognize that the post-B.A. B.S.W. programme at M.U.N. was designed, largely, to accommodate the department to enable upgrading of experienced social services workers who did not have benefit of professional education; it was not designed to give novices a shortened degree route - when compared to the norm - and it should not be permitted to be used in this fashion.

12. That as the province has done with respect to nursing (within health), that some remuneration enrichment programme be instituted to attract professionally qualified social workers to the department of social services.

13. That the government expand its incentives to attract professional social workers to rural and northern areas of the province and enhance options to support the professional education of rural, northern and native people, who are more likely to return to their home regions.

14. That the public services commission, and the department of social services actively and personally recruit social work students before they graduate.

15. That if public services unions refuse to support such constructive efforts, that professional social workers pursue an independent union - not only in their interest but also in the best interest of the child.

16. That professional social workers be assigned specialized child protection caseloads (similar to the unit established in St. John's) such that they may concentrate their learning, their experience and their strengths to the benefit of the client/victim (the existing child abuse unit is not sufficient to meet the need throughout the province).

17. That professional social workers be assigned child abuse, child sexual abuse caseloads such that they may concentrate their learning experience and strengths, to the benefit of the client/victim.

18. That, given the above, child protection caseloads be limited, by policy, to a maximum of twenty-three active protection cases, and ten "inactive protection cases" (for a maximum of thirty-three and that complexity of a caseload be taken into account and defined by a professional social worker clinical supervisor (as opposed to a management supervisor).

19. That clinical social work supervision be required, by policy, at levels sufficient to provide adequate worker support, a continuum of professional development, and to ensure early error correction - a maximum ratio of one clinical supervisor for six front line workers, is recommended (supervision in social work is similar, conceptually, to the expectation that the general practice physician will have access to consultation from a specialist.).

20. That only professionally trained social workers be assigned child protection/child abuse/child sexual abuse cases, and the supervision thereof (no person without adequate professional training should be assigned such cases).

21. That the social policy committee of cabinet ensure [reduced child protection caseloads are made possible through new monies and other resources, in the department of social services' budget, and that smaller caseloads for some social workers not be expected to be "purchased" at the expense of yet higher caseloads for other social workers - and thus

reduced services for other categories of disadvantaged clients (such as mental retardation cases or young offenders).

22. That new social work positions be created and filled with professional social workers and that such positions be additional, and not be "left unfilled" in order to meet other "fiscal" goals while creating the illusion that there are more professional social work positions than there are in functional reality.

23. That the alleged practice of management keeping some social work positions "vacant", in order to save money and to balance departmental budgets, be stopped - as it is not in the best interest of the child (some who were consulted argued that this practice gave the public a false and manipulated impression of the total number of functional social work positions available in the department, as well as further exacerbating the problems created by large caseloads, as well as creating confusion for clients when they have their primary social worker changed "continually".).

24. That the deputy minister of social services be made responsible for an effective recruitment programme to attract new professional social workers to the department.

25. That the minister of social services be responsible for arranging through the social policy committee of cabinet, resources designated to facilitate the

expansion of the social work programme at Memorial University, to meet the province's immediate and possibly short term need for more properly educated and trained social workers.

26. That the department of social services, in consultation with the public service commission, establish effective procedures for proactive recruitment of professionally trained social workers.

27. That the department of social services managers and the minister of social services be held accountable, in policy, to demonstrate the ways and means that they have ensured quality professional standards of child protection and care are being maintained when they have made an administrative decision to:

    a. require protection caseloads above the standard recommended 33, and/or;

    b. not make adequate provision for competent and adequate clinical social work supervision, and/or;

    c. to hire persons without benefit of sufficient professional education: to attempt to make professional individualized treatment plans; to attempt to manage a case with adequate knowledge regarding standards of care; to attempt to engage the client in complex counselling and therapy; to attempt to distinguish between management's needs and the client's needs - while resisting the displacement of the latter.

28. That, in policy, social workers be given the right and responsibility to formally record their professional assessment, without fear of punishment, when their professional judgement is subordinated by administrative decision, and that when administrators demand action that the social worker judges is counterindicated, that such action be recorded and that administrators be held fully accountable.

29. That the provincial government revise educational legislation or guidelines to facilitate early detection and early intervention by enabling professional social workers to provide services to abused children, their teachers and their families, from within the school system.

30. That, given the above, teachers and school administrators be made aware of policies, procedures and practices for the effective use of professional social workers for purposes of prevention and early detection, assessment, investigation, and advocacy.

31. That more new resources be designated for the development and continuation of programmes aimed at prevention and early intervention.

32. That, given the above, the school of social work at Memorial University, design a support course for social work within the school system.

33. That, given the above, social workers employed by school boards, in positions entitled "school social worker" and that school social workers be accountable to a chief school social worker employed by the department of education.

34. That, given the above, persons employed as school social workers have, at a minimum, a B.S.W. degree.

35. That all social services managers that have decision responsibility for client service have, at a minimum, a B.S.W. and relevant experience.

36. That clinical/social work practice goals and objectives be given priority in both policy and practice, by the department of social services, over administrative goals and objectives.

37. That when an administrator who is not a professional social worker overrides a clinical assessment, protection plan or treatment plan, recommended by a professional social worker, the social worker of record have access to an appeal body and process.

38. That a clinical case conference team, made up of decision makers who are senior and experienced

social work clinicians, a physician and a lawyer, be responsible for making final judgements and decisions, based, in part, on clinical/professional social work practice criteria, be established to manage all cases where an administrator wishes to override the recommendations of the professional social worker of record.

39. That in cases where any administrator, including the minister, overrides a professional recommendation:

    a. that the department administrator must become the service worker of record and must assume responsibility for the case and the service.

    b. that the professional social worker who had her/his recommendations for professional action and service rejected or displaced, have the right and the responsibility to officially record and file her/his professional assessment and professional judgement, without threat or prejudice.

40. That in the event that the action taken by administrators is not effective in protecting and/or otherwise serving the child or youth (proves to be not in the best interest of the child), that a professional social worker with such knowledge may request to appear/reappear before a case conference team to advocate on behalf of the child or youth.

41. That the department confirm its commitment to norms of care and service, and go on record that administrative expedience and political expedience are to be avoided and that when they do not appear that they may be challenged in an official and formal clinical case conference.

42. That managers or administrators who do not have clinical social work education, not provide or attempt to provide clinical supervision.

43. That the department continue its programme of professional development for supervision, with special reference to clinical supervision.

44. That the services, care, and supervisory, management and administrative policies and practices of the department be reviewed by a team of consultants who are social workers with human services management training and experience.

45. That decision making regarding service, care and protection, be kept very close to front line social worker, the client and the worker's supervisor and be consultative in orientation.

46. That, given the above, in cases where the best decision is in doubt, that front line social worker and clinical supervisor have ready access to a formal clinical case conference opportunity.

47. That, given the above, clear rules for authority and accountability be established that reflect the realities of clinical practice, in the best interest of child protection and treatment.

48. That large institutions (such as Mount Cashel) be abandoned as they pose too many difficulties in the provision and monitoring of care - this includes child and youth protection and youth corrections.

49. That foster home and group home (residential care) programmes be designed in consultation with senior professional social workers, based on protection, treatment, support and care goals and objectives.

50. That all foster homes, recruited, be assessed completely and carefully, by a professional social worker, before being selected and before children or youth are placed in such care.

51. That, if under emergency conditions, a child must be placed in a foster care opportunity where a home has not been assessed, then such evaluation must begin within 72 hours.

52. That such emergency placements not be permitted to become ends in themselves; they should represent a small proportion of placements, with due respect to regional differences.

53. That all foster parents receive training and supervision by a professional social worker to

ensure that expectations for care are understood and agreed to and that individual differences in need are respected.

54. That administrative expectations be kept to a minimum and occupy the foster parent no more than 30 minutes per week.

55. That monitoring, evaluation and re-contracting, by a professional social worker, be based primarily on standards of individualized care, with the achievement of administrative expectations being considered as being tertiary.

56. That the department support the time resources and personnel, as judged necessary by a clinical social work supervisor, to ensure that complete assessment, monitoring and evaluation, by a professional social worker, is feasible.

57. Assuming the above, that the social worker be responsible for an individualized treatment plan that accounts for the needs of the child or youth (primary), the needs of the foster parent (secondary), and the administrative requirements of the department (tertiary).

58. That if a social worker has any reason to suspect that a child, or youth is being neglected or that his/her biopsychosocial well-being is threatened, then the social worker use his/her authority to remove the child/youth from a foster-home, group home, or

other institution and that management respect that the decision is a clinical decision that is correctly biased in the direction of over inclusion.

59. If any threat to the child/youth placed is suspected, then the child/youth should be interviewed on neutral ground, away from the foster-home or residential care setting, by a social worker with an arms-length relationship with the foster parents, group home, or institution.

60. That the department establish a receiving home in, at least, each service region.

61. That the department recognize that investigating neglect or abuse in a family is not the same as investigating abuse in a foster home, group home or other out of home care, and that an independent, arms length, professional services panel be established to investigate complaints coming from within government child welfare services. Such a panel should include a senior social worker, a lawyer and a physician.

62. That there be a social worker assigned to attend to the children and youth placed in group homes - one social worker for every two or three group homes.

63. That as the expansion of the youth corrections facility at Whitbourne, is counterindicated (argued by our association in a brief to the current minister), and as the province has moved toward more

deinstitutionalization of care in other areas, that plans be abandoned for the expansion.

64. That, as too many youth are being placed in custody, that a review be conducted with respect to how the young offenders act is being implemented in the province with special attention to the correlative abuses to youth.

65. That the department of social services increase the number of social workers capable of carrying out the longer term counselling and therapy needed, by victims of abuse, after the confrontation, protection, assessment and court process.

66. That the department of social services launch a feasibility study, to determine if a child protection and family services commission model, similar to the alcohol and drug dependency commission structure, could provide an arms length child and family social service in an efficient and effective manner.

67. That such a feasibility study be conducted by professional social workers who have expertise in child abuse, child sexual abuse and family services - including family counselling and therapy.

68. That the department of social services review its mandate and goals within the areas of promotion of family well-being, child welfare, and psychosocial services for families.

69. That the department of social services be renamed "the department of family and social services".

70. That the department of social services reduce caseload size such that longer term supportive counselling and psychosocial therapy may be provided, with due respect to continuity of professional social work counselling and therapy.

71. That the department of social services establish a generous and consistent policy that will permit their social workers to refer department of social services clients who are victims and survivors, for private professional counselling and therapy when no other knowledgable, skilled, trained and effective therapist is readily available through other public services.

72. That the department establish a list of acceptable private practice professionals educated, experienced and capable of carrying out long-term psychosocial counselling and therapy with persons who have been victims of physical abuse, sexual abuse, incest, neglect and emotional abuse, as children, youth or adult survivors.

73. To enable early and rapid intervention and/or investigation, that caseload sizes be reduced significantly, that decision-making power be decentralized more to the supervisory level, and that special education and training be available beyond

general practice for, at least, professional social workers, police and physicians.

74. To improve the quality of psychosocial assessments with respect to abuse, that the general professional education of social workers be supplemented with specialized education regarding abuse assessment and investigation and that caseload sizes enable complete investigation and assessment.

75. To improve protection response, related investigations and assessments, establish standards of clinical practice for social work and police investigation, based on existing models, but adapted to the Newfoundland reality.

76. To reduce the further victimization of those abused by ensuring that those social workers assigned to investigation and assessment and those police officers assigned to investigation, are properly trained to complete abuse investigations, including sexual abuse.

77. That physicians receive increased medical training to surface, treat medical problems and to refer patients for protection and psychosocial counselling.

78. That the philosophy of least intrusive intervention be applied or ignored based on clinical decision criteria.

79. That the criminal justice disclosure and testimony process for children be reviewed with respect to establishing procedures that reduce the further victimization of the child.

80. That when evidence is too weak for conviction, that alternate protection measures be instituted, possibly under the authority of the family court:

    a. voluntarily removal of the alleged offender;

    b. seek an order of supervision, by a professional social worker;

    c. seek an order for restricted access;

    d. seek a restraining order.

81. That expulsion from the province not be permitted to be defined as either a "punishment" or as justice.

82. That investigations of abuse, psychosocial assessments, treatment plans and long-term treatment of victims/survivors, be carried out by professionally trained social workers.

83. That in cases of doubt that a clinical case conference model be used, chaired by a senior social work clinician, with a lawyer and physician to complete the panel.

84. That in cases where an abuse may have been perpetrated by a person within out-of-home care, or a youth correction service, or any other care-giving institution, then the investigation, assessment and disposition should be made by a professional team made up of a senior clinical social worker, a lawyer and a physician, who put forward their decision to the director of child welfare, and who are accountable to a minister other than social services, health or justice.

85. That two-level reporting and follow-up, be required in abuse cases, even if criminal proceedings are unlikely, and that a case management team be established with a clinical social worker as case manager, to ensure that the child/youth does not fall through the cracks.

86. That the school of social work at Memorial University:

    a. establish a programme beyond the general practice degree, for continuing professional education with respect to all aspects of child protection.

    b. establish a basic certificate course for social workers and one for police to prepare each to conduct sensitive investigation interviews.

    c. establish an infrastructure to complete clinical and policy research with respect to:

promoting family well-being; prevention of child abuse and neglect; abuse investigation and biopsychosocial assessment; alternative protection measures; impact of abuse; victimization by the justice process; protection in rural and northern communities; long-term counselling and therapy; institutional abuse; and administrative obstructions to clinical practice.

d. that some resources from Mount Cashel be set aside to establish a permanent chair for the study of child protection and child abuse, within the school of social work, that would act as a permanent memorial to the victims of Mount Cashel.

87. That the victims of Mount Cashel receive needed long term and competent psychosocial counselling at the expense of the public and the individual and institutional perpetrators.

10. Memorial University School of Social Work:[9]

1. That the government of Newfoundland act with dispatch to enact an effective act to control the title "social worker" and practice of social work, including psychosocial assessment, counselling and therapy.

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[9] Exhibit C-0545A.

2. With the introduction of control of title, that the government take no action, such as declassification or reclassification, that would allow non-social workers to occupy a non-social work position, while carrying out social work duties such as psychosocial assessment, investigations or psychosocial counselling and therapy.

3. That the government expand its support for untrained workers and continue to support the school of social work in the interest of upgrading all those who are acting in social work roles, to enable them to qualify for the title "social worker" and to practice as professional social workers.

4. That the government and the department of social services establish a clear policy that the minimum qualification required to carry out social work responsibilities be that of a B.S.W.

5. That the government and the department of social services expand their support for untrained social service staff for whom the completion of a B.S.W. would facilitate the improvement of services to the public.

6. That the government and the department of social services expand their support for the school of social work at Memorial University, in order that it may increase its service to those untrained workers needing upgrading as well as to other professionals and para-professionals.

7. That the government expand its incentives to attract professional social workers to rural and northern areas of the province, and enhance options to support the professional education of rural, northern and native people, who are more likely to return to their home regions.

8. That the public service commission, and the department of social services actively and personally recruit social work students before they graduate.

9. That the school of social work negotiate increased resources to:

   a. establish an undergraduate course focused on "counselling with victims of abuse and neglect";

   b. establish a graduate course on "clinical social work supervision";

   c. establish a post-baccalaureate diploma programme in "counselling and therapy for child abuse";

   d. establish institutes to educate professionals and para-professionals in focused skill areas related to child protection and offender therapy, and to certify knowledge and skill attainment, and

e. develop a proposal to establish a research chair on child abuse and survivor treatment, for the Memorial University school of social work, to act, in part, as a memorial to the victims of Mount Cashel and other survivors of abuse.

10. That professional social workers be assigned specialized child protection and child abuse and sexual abuse caseloads such that they may concentrate their continuing professional education, their experience and their strengths.

11. That, given the above, child protection caseloads be limited, by policy, to a maximum of twenty-three active protection cases, and ten "inactive protection cases" (for a maximum of thirty-three) and that complexity of caseload be taken into account and defined by a professional social worker clinical supervisor (as opposed to a management supervisor).

12. That clinical social work supervision be required, by policy, at levels sufficient to provide adequate worker support, a continuum of professional development, and to ensure early error correction - a maximum ratio of one clinical supervisor for six front line workers, is recommended.

13. That only professionally trained social workers be assigned child protection/child abuse/child sexual abuse cases, and the supervision thereof.

14. That the school of social work and the department of social services establish ways and means to:

    a. provide professional social work education to untrained workers within the department.

    b. provide opportunities for specialized education for professional social workers in the area of:

        i) child protection

        ii) treating survivors of abuse and their families

        iii) treating the offender

        iv) clinical supervision for child protection, survivor therapy and offender therapy.

15. That the department create additional new social work positions to be filled with professional social workers.

16. That the department of social services, in consultation with the public service commission and

the school of social work, establish effective procedures for proactive recruitment of professionally trained social workers.

17. That the provincial government revise educational legislation or guidelines to facilitate early detection and early intervention by enabling professional social workers to provide services to abused children, their teachers and their families, from within the school system.

18. That, given the above, teachers and school administrators be made aware of policies, procedures and practices for the effective use of professional social workers for purposes of prevention and early detection, assessment, investigation, and advocacy.

19. That more new resources be designated for the development and continuation of programmes aimed at prevention and early intervention.

20. That, given the above, the school of social work at Memorial University, design a support course for social work within the school system.

21. That, given the above, social workers employed by school boards, in positions entitled "school social worker" and that school social workers be accountable to a chief school social worker employed by the department of education.

22. That, given the above, persons employed as school social workers have, at a minimum, a B.S.W. degree.

Administration of Social Services

23. That all department of social services managers that have decision responsibility for client service have, at a minimum, a B.S.W. and relevant experience.

24. That clinical/social work practice goals and service objectives be given priority in both policy and practice, by the department of social services, over administrative goals and objectives.

25. That when an administrator who is not a professional social worker overrides a clinical assessment, protection plan or treatment plan, recommended by a professional social worker, then the social worker of record have access to an appeal body and process.

26. That a clinical case conference team, made up of decision makers who are senior and experienced social work clinicians, a physician and a lawyer, be responsible for making final judgements and decisions, based, in part on clinical/professional social work practice criteria, be established to manage all cases where an administrator wishes to override the recommendations of the professional social worker of record.

27. That managers or administrators who do not have clinical social work education, not provide or attempt to provide clinical supervision or to make clinical decisions.

28. That the department continue its programme of professional development for supervision, with special reference to supportive clinical supervision.

29. That the services, care and supervisory, management and administrative policies and practices of the department be reviewed by a team of consultants who are social workers with human services management training and experience.

30. That decision making regarding service, care and protection, be kept very close to front line social worker, the client and the worker's supervisor and be consultative in orientation.

31. That, given the above, in cases where the best decision is in doubt, that front line social worker and clinical supervisor have ready access to a formal clinical case conference opportunity.

32. That, given the above, clear rules for authority and accountability be established that reflect the realities of clinical practice, in the best interest of child protection and treatment.

33. That professors within the school of social work who have a management and management

consultation background put forward a proposal to assist the department of social services to complete an internal review.

34. That large institutions (such as Mount Cashel) be abandoned as they pose too many difficulties in the provision and monitoring of care - this includes child and youth protection and youth corrections.

35. That foster home and group home (residential care) programmes be designed in consultation with senior professional social workers, based on protection, treatment, support and care goals and objectives.

36. That all foster parents receive training and supervision by a professional social worker to ensure that expectations for care are understood and agreed to and that individual differences in need are respected.

37. That the department support the time resources and personnel, as judged necessary by a clinical social work supervisor, to ensure that complete assessment, monitoring and evaluation, by a professional social worker, is feasible.

38. That the department establish a receiving home in, at least, each service region.

39. That the department recognize that investigating neglect or abuse in a family is not the same as investigating abuse in a foster home, group home or

other out of home care, and that an independent, arms length, professional services panel be established to investigate complaints coming from within government child welfare services. Such a panel should include a senior social worker, a lawyer and a physician.

40. That the department of social services increase the number of social workers capable of carrying out the longer term of counselling and therapy needed, by victims of abuse, after the confrontation, protection, assessment and court process.

41. That the department of social services launch a feasibility study, to determine if a child protection and family services commission model, similar to the alcohol and drug dependency commission structure, could provide an arms length child and family social service in an efficient and effective manner.

42. That such a feasibility study be conducted by professional social workers who have expertise in child abuse, child sexual abuse and family services - including family counselling and therapy.

43. That the department of social services review its mandate and goals within the areas of promotion of family well-being, child welfare, and psychosocial services for families.

44. That the department of social services be renamed "the department of family and social services".

45. That the department of social services reduce caseload size such that longer term supportive counselling and psychosocial therapy may be provided, with due respect to continuity of professional social work counselling and therapy.

46. That the department of social services establish a generous and consistent policy that will permit their social workers to refer department of social services clients who are victims and survivors, for private professional counselling and therapy when no other knowledgable, skilled, trained and effective therapist is readily available through other public services.

47. To enable early and rapid intervention/investigation, that caseload sizes be reduced significantly, that decision-making power be decentralized more to the supervisory level, and that special education and training be available beyond general practice for, at least, professional social workers, police and physicians.

48. To improve the quality of psychosocial assessments with respect to abuse, that the general professional education of social workers be supplemented with specialized education regarding abuse assessment and investigation and that caseload sizes enable complete investigation and assessment.

49. To improve protection response, related investigations and assessments, establish standards of clinical practice for social work and police investigation, based on existing models, but adapted to the Newfoundland reality.

50. To reduce the further victimization of those abused by ensuring that those social workers assigned to investigation and assessment and those police officers assigned to investigation, are properly trained to complete abuse investigations, including sexual abuse.

51. That physicians receive increased medical training to surface, treat medical problems and to refer patients for protection and psychosocial counselling.

52. That the philosophy of least intrusive intervention be applied or ignored based on clinical decision criteria.

53. That the criminal justice disclosure and testimony process for children be reviewed with respect to establishing procedures that reduce the further victimization of the child.

54. That when evidence is too weak for conviction, that alternate protection measures be instituted, possibly under the authority of the family court; these could include:

a. seeking voluntary removal of the alleged offender;

b. seeking an order of supervision, by a professional social worker;

c. seeking an order for restricted access;

d. seeking a restraining order.

55. That expulsion from the province not be permitted to be defined as either a "punishment" or as justice.

56. That investigations of abuse, psychosocial assessments, treatment plans and long-term treatment of victims/survivors, be carried out by professionally trained social workers.

57. That in cases of doubt that a clinical case conference model be used, chaired by a senior social work clinician, with a lawyer and physician to complete the panel.

58. That in cases where an abuse may have been perpetrated by a person within out-of-home care, or a youth correction service, or any other care-giving institution, then the investigation, assessment and disposition should be made by a professional team made up of senior clinical social worker, a lawyer and a physician, who put forward their decision to the director of child welfare, and who are

accountable to a minister other than social services, health, or justice.

59. That two-level reporting and follow-up, be required in abuse cases, even if criminal proceedings are unlikely, and that a case management team be established with a clinical social worker as case manager, to ensure that the child/youth does not "fall through the cracks".

60. That the school of social work at Memorial University:

    a. establish a programme beyond the general practice degree, for continuing professional education with respect to all aspects of child protection.

    b. establish a basic certificate course for social workers and one for police to prepare each to conduct sensitive investigation interviews.

    c. establish an infrastructure to complete clinical and policy research with respect to: promoting family well-being; prevention of child abuse and neglect; abuse investigation and biopsychosocial assessment; alternative protection measures; impact of abuse; victimization by the justice process; offender therapy; protection in rural and northern communities; long-term counselling and therapy; institutional abuse; and administrative-obstructions to clinical practice.

d. negotiate with the community to ensure resources be set aside to establish a permanent chair for the study of child protection, survivor treatment, within the school of social work, that would act as a permanent memorial to the victims of Mount Cashel and other survivors who have come before the Commission.

11. Women's Legal Education and Action Fund (L.E.A.F.):[10]

1. The criminal justice system must meet the constitutional standards articulated in the charter. LEAF respectfully submits that the criminal justice system promote the equality of women and children who are victims of physical and sexual abuse through an interpretation and application of those who are vulnerable to victimization. To do otherwise is inconsistent with the Charter.

2. The experiences of women and children, experiences which have been traditionally silenced and trivialized, be afforded legitimacy and respect. Treating victims of violence with respect can take many forms: sensitive police response to

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[10] Exhibit C-0548.

allegations of abuse, adequate and appropriate prosecution of crimes involving women and children, reflective criminal sentences in proportion to the crime, and financial and institutional support for social service agencies which provide essential services for survivors of sexual and physical assaults.

3. To further break down the myths and stereotypes which remain around child sexual abuse and violence against women, the actors in the criminal justice system must be further sensitized and educated about the dynamics and effects of abuse of disadvantaged members of Newfoundland, and Canadian, society. LEAF applauds the initiatives which have been undertaken in this regard in Newfoundland and encourages further education of police officers, Crown Attorneys, Judges, and the general public.

12. Children in Care Alumni Inc.:[11]

1. We request that the Royal Commission of Inquiry make recommendations which address the issue of how judicial and Child Welfare Systems can be held accountable for their procedures and practices in caring for children of the State.

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[11] Exhibit C-0549.

2. Establishment of a Children's Ombudsman with investigative powers and directly accessible to children in care to hear the concerns of such children.

3. Education of children entering State care to make them aware of their rights and the obligations of the State as the parental care giving substitute.

4. Clearly defined policies, standards of practice and procedures with adequate resources for their implementation to provide appropriate placements with consistent monitoring and follow up supervision to ensure safety and adequate care giving.

5. Training and systematic supervision of State care givers to reflect the positive parenting standards advocated by the State for all Canadian children and their families.

6. Criminal record checks of all persons working directly with children in care and a national registry of child abusers because sexual offenders with a preference for children are more likely to seek those employment opportunities and social environments which bring them into closer contact with potential victims.

7. Treatment programs for victims of abuse as well as offenders to break the cycle of inter-generational abuse.

13. Canadian Civil Liberties Association:[12]

> "We believe, therefore, that there will not be adequate public confidence in the Newfoundland justice system until there is in place a well-funded and properly empowered investigative and review agency which is independent of all police forces and governments. Such an agency should be available not only to investigate and process the complaints of aggrieved civilians but also to conduct ongoing audits of police and prosecutorial activity."

14. The Brother T.I. Murphy Centre:[13]

Process towards solutions:

1. Finding a Will to Change:

To determine whether there is a will within the province to work towards solutions will depend on who "buys-in" to the process. The process should begin in several places at the same time, with influential support to help get it underway. Community leaders in government (political and bureaucratic), business, labour, church and support service groups should come together in an open and candid forum to express their will to seek solutions. It is necessary to include all government departments including education, health, economic development, etc., because what affects the victim, in turn also affects all aspects of community life. Since the problems are interconnected, so are the solutions. No longer can we say that this problem is for justice or social services, we must accept and work with the linkages that operate within society.

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[12] Exhibit C-0570.

[13] Exhibit C-0620.

2. Claiming Ownership of the Problems

Hopefully the climate of change can be established through step 1 and the problems can now be dealt with at the local level. Unless the community claims ownership of the problems, then there is no likelihood of finding solutions. The community can be a municipality, or a larger or smaller area as the problem is defined. The myriad of leaders and interested persons then begins the process of tackling the problem by identifying the issues, admitting ownership and exploring solutions.

Note by the Commissioner on "Reasonable (and Probable) Grounds" March 15, 1991

Appendix L

Reasonable (and Probable) Grounds

The expression "reasonable and probable grounds" as the basis of belief that an offence has been committed justifying the laying of an information before a justice of the peace is of venerable authority and has held its place in the *Criminal Code of Canada* since that statute was first enacted in 1892. To go no further back than the *Revised Statutes of Canada, 1970* the section in question first as 453, and later as 455 reads:

> **"455.(1) Any one who, upon reasonable and probable grounds, believes that a person has committed an indictable offence may lay an information in writing and under oath before a justice, and the justice shall receive the information where it is alleged that**
>
> **(a) the person has committed, anywhere, an indictable offence that may be tried in the province in which the justice resides, and that the person**
>
> > **(i) is or is believed to be, or**
> > **(ii) resides or is believed to reside,**
>
> **within the territorial jurisdiction of the justice;**
>
> **(b) the person, wherever he may be, has committed an indictable offence within the territorial jurisdiction of the justice;**
>
> **(c) the person has anywhere unlawfully received property that was unlawfully obtained within the territorial jurisdiction of the justice; or**

> **(d) the person has in his possession stolen property within the territorial jurisdiction of the justice.**
>
> **(2) An information that is laid under this section may be in Form 2. 1953-54, c.51, s.439."**

The relevant section in the Revised Statutes of 1985 is section 504 and is unchanged in effect except for the removal of the words "and probable" from the first line and subsection (2). It is reproduced here for the reader's greater certainty.

> **"504. Any one who, on reasonable grounds, believes that a person has committed an indictable offence may lay an information in writing and under oath before a justice, and the justice shall receive the information, where it is alleged**
>
> **(a) that the person has committed, anywhere, an indictable offence that may be tried in the province in which the justice resides, and that the person**
>
> **(i) is or is believed to be, or**
>
> **(ii) resides or is believed to reside,**
>
> **(b) that the person, wherever he may be, has committed an indictable offence within the territorial jurisdiction of the justice;**
>
> **(c) that the person has, anywhere, unlawfully received property that was unlawfully obtained within the territorial jurisdiction of the justice; or**
>
> **(d) that the person has in his possession stolen property within the territorial jurisdiction of the justice. R.S., c. C-34, s.455; R.S., c.2(2nd Supp.), s.5."**

Appendix L

Between the 1970 and 1985 revisions the *Statute Revision Act*, S.C. 1975 - 75 - 76, c.20, s.1 was enacted establishing a commission composed of three employees of the Department of Justice "appointed thereto, from time to time, by the Minister". The commission by section 5 thereof was directed to "arrange, revise and consolidate the public general statutes of Canada", empowered to omit therefrom such enactments as might have expired or been repealed or had a local connotation, including such local or private acts as might impose duties or limit rights affecting the public, and to alter numbering and arrangement of the statutes apparently at will, although paragraph (e) provides limitation in the following terms by authorizing the commission to:

> **"(e) make such alterations in the language of the statutes as may be required to preserve a uniform mode of expression, without changing the substance of any enactment;"**

The commissioners, I am advised, had contemplated removal of the words "and probable" wherever they occurred in the Criminal Code in conjunction with "reasonable grounds", and in the sense which is here considered. Although imperfectly done considering that "reasonable and probable grounds" still appears in section 234(1) of the Criminal Code contained in R.S.C. 1985 c.48 it must be presumed that the steps required by the *Statute Revision Act* and summarized in the recitals in chapter 48 as to the Minister of Justice laying drafts before committees of the Senate and House of Commons were complied with and the attention of their members called to the change prior to the reporting of the bill and its enactment as S.C. 1987, c.48. I must here acknowledge the candour and co-operation of the commission in advising Mr. Clay M. Powell, Q.C., co-counsel to this commission, of their view that the change effected was not one of substance, and I do not think it inaccurate to assume that their view was put forward in any explanation that was given to Parliament or its committees at the time. *Omnium praesumuntur rite ac solemniter esse acta.*

The commissioners, as I am told, considered the views of His Honour Judge O'Hearn of the Nova Scotia County Court expressed in *Regina v. Jewers* 15 C.R.N.S. 65. This was a case where, upon investigating a motor accident, a constable found that the driver of one car, admittedly the owner, had a "strong smell of liquor on his breath and that his eyes were bloodshot and watery". On appeal, evidently *de novo*, although offering no evidence, the appellant raised *inter alia* the objection that the constable did not have reasonable and probable grounds to demand a breathalyser test because the appearance of the appellant's eyes could be explained by a blow on the nose as a result of the collision. The appeal was dismissed, but in the course of his reasons the learned county court judge addressed the question of any distinction existing between "reasonable and probable grounds" and "reasonable grounds". Although these reasons are fortified by copious references to cases perhaps the biggest gun brought to bear was a quotation from Winfield on the Law of Tort (2nd edition) at p.671 reading:

> **"There does not appear to be any distinction between 'reasonable' and 'probable'. The conjunction of these adjectives is a heritage from the redundancies in which the old pleaders delighted, and although it has been said that reasonable cause is such as would operate on the mind of a discreet man while probable cause is such as would operate on the mind of a reasonable**

> **man, this does not help us much for it is difficult to picture a reasonable man who is not discreet."**

The judge actually found that the constable had "reasonable and probable grounds" for his belief that the ability of the appellant was impaired, and since the strong smell of alcohol was present it might be thought that his observation on the etymology of the question was simply a *tour de force*, particularly since on further appeal to the Appeal Division of the Nova Scotia Supreme Court, McKinnon C.J.N.S., giving the judgment of the court dismissing it, did not advert to the corresponding ground of the appeal since he considered it a question of fact. Judge O'Hearn's judgment was rendered in June 1971 and that of the Appeal Division in February 1972.

I have referred to the fact that the attack on the words "and probable" misfired in the case of section 234 at least where they were allowed to remain to preserve "reasonable and probable grounds" in the case of a demand for a breath sample by the police although successful in the case of section 34 (self defence) and 504 itself. Of even greater interest is the fact that the 1st supplement to the *Revised Statutes of Canada, 1985* by chapter 27, section 82 thereof successfully replaced the expression in subsection one of section 512 which reads as of the time of writing:

> **"82. All that portion of subsection 512(1) of the said Act preceding paragraph (a) thereof is repealed and the following substituted therefor:**
>
> > **'512(1) A justice may, where the justice has reasonable and probable grounds to believe that it is necessary in the public interest to issue a summons or a warrant for the arrest of the accused, issue a summons or warrant, notwithstanding that'."**

Astonishingly the French version of section 82 of chapter 27 of the 1st supplement does no such thing and reads:

> **"Le passage du paragraphe 512(1) de la même loi qui précède l'alinéa a) est abrogé et remplacé par ce qui suit:**
>
> > **512(1) Un juge de paix peut, lorsqu'il est nécessaire d'agir de la sorte dans l'intérêt du public, décerner une sommation ou un mandat pour l'arrestation du prévenu même dans les cas suivants."**

The latest advice received from Ottawa is that there is now in contemplation a bill designed to remove all occurrences in the Code of the phrase "reasonable and probable grounds" in favour of "reasonable grounds". It is to be hoped that the following engages the attention of Parliament.

Is the change in the wording of "reasonable and probable grounds" by removing the element of probability a change in substance? The statute revision commissioners evidently thought not, and as I have said above one must presume that their opinion was offered to Parliament in those cases where the change was made by the *Revised Statutes of Canada, 1985 Act*, although it would be interesting to know what explanation was offered in the case of section 512 when the 1st supplement was introduced. I have been furnished with the reasons for judgment of the Honourable Mr. Justice Hugesson of the Federal Court of Appeal giving the judgment of that court in *Baron et al. v. The Queen et al.* dated November 28, 1990 and at the time of writing unreported. The court was considering subsection (3) of section 231.3 of the *Income Tax Act* and allowed an appeal from the decision of the trial judge who had found that this subsection, providing for search and seizure and containing the provision for reasonable and probable grounds, did not offend against the provisions of section 8 of the *Charter of Rights and Freedoms* as being unreasonable in the case at bar.

In the course of giving reasons allowing the appeal and striking down the impugned subsection the learned justice of appeal turned aside from his principal theme to consider argument raised only by the successful appellants at page 17 of the typescript:

> **"It will be recalled that the standard set by subsection 231.3(3) is that of "reasonable grounds to believe". The appellants argue that this is not good enough. The minimum standard must be "reasonable and probable grounds". The appellants' focus on the following passage from the decision in *Southam* (above):**
>
> > **In cases like the present, reasonable and probable grounds, established upon oath, to believe that an offence have *(sic)* been committed and that there is evidence to be found at the place of the search, constitutes the minimum standard, consistent with s.8 of the Charter, for authorizing search and seizure.**
>
> **(At page 168)**
>
> **By eliminating the word "probable" from the legislative standard, it is argued, Parliament has suppressed the "more likely than not" standard of proof to be applied by the issuing judge. I do not agree.**
>
> **In the first place, it seems to me that, as a matter of simple linguistic construction, the word "probable" in the phrase "reasonable and probable grounds to believe" adds nothing. In this connection, it is convenient to refer**

> **to the standard dictionary definition in both official languages.**
>
> **The Shorter Oxford dictionary gives the following modern meaning:**
>
> > **"Probable"**
> >
> > **...**
> >
> > **2. Such as to approve itself to the mind; worthy of acceptance or belief; rarely in bad sense, specious, colourable. (Now merged in 3.) - 1872. 3.Having an appearance of truth; that may reasonably be expected to happen or prove true: likely 1606. (Emphasis added)**
>
> **Even more interesting is Robert's indication of an archaic definition for the French "probable":**
>
> > **"Probable"**
> >
> > **1. Vx. Opinion probable, qui sans exclure la possibilité d'une autre opinion, ne présente cependant rien de contraire à la raison. - Relig. Opinion probable: opinion fondée sur des raision sérieuses quoique non décisives. (Emphasis added)**
>
> **This may very well explain how the word has come to be associated historically by lawyers with the word "reasonable". Like the second member of such other hallowed English legal phrases as "null and void", "good and valid", "last will and testament" etc, it does nothing."**

Mr. Justice Hugesson went on to quote a passage preceding by a few lines the one quoted above in the judgment of the Supreme Court of Canada in *Hunter et al v. Southam Inc.* 14 C.C.C. (3d) 97, in which Mr. Justice Dickson, as he then was, gave the judgment of the court holding that section 10(1) and (3) of the

Combines Investigation Act was inconsistent with section 8 of the Charter and of no force and effect. I quote the whole of the passage as delivered by Mr. Justice Dickson which was split into two parts in the reasons of Mr. Justice Hugesson. As reproduced at pp. 114 - 115 of the report in the *Canadian Criminal Cases*, they are virtually contiguous:

> **"Anglo-Canadian legal and political traditions point to a higher standard. The common law required evidence on oath which gave "strong reason to believe" that stolen goods were concealed in the place to be searched before a warrant would issue. Section 443 of the Criminal Code authorizes a warrant only where there has been information upon oath that there is "reasonable ground to believe" that there is evidence of an offence in the place to be searched. The American Bill of Rights provides that "no warrants shall issue but upon probable cause, supported by oath or affirmation . . .". The phrasing is slightly different but the standard in each of these formulations is identical. The State's interest in detecting and preventing crime begins to prevail over the individual's interest in being left alone at the point where credibly-based probability replaces suspicion. History has confirmed to appropriateness of this requirement as the threshold for subordinating the expectation of privacy to the needs of law enforcement. Where the State's interest is not simply law enforcement as, for instance, where State security is involved, or where the individual's interest is not simply his expectation of privacy as, for instance, when the search threatens his bodily integrity, the relevant standard might well be a different one. That is not the situation in the present case. In cases like the present, reasonable and probable grounds, established upon oath, to believe that an offence has been committed and that there is evidence to be found at the place of the search,**

> **constitutes the minimum standard, consistent with s.8 of the Charter, for authorizing search and seizure. In so far as s.10(1) and (3) of the Combines Investigation Act do not embody such a requirement, I would hold them to be further inconsistent with s.8."**

It will be observed that Mr. Justice Dickson first compares the language of section 443 of the Criminal Code - "reasonable ground to believe" - to that of the American Bill of Rights - "upon probable cause" - and finds these expressions identical as to standard but goes on to prescribe the element of probability.

With the greatest respect I am doubtful about the effect of Mr. Justice Hugesson's observations on the point in *Baron's* case. In the first place the argument as to the essential quality of probability was raised by the successful appellants and the fact that it was rejected by the learned judge did not affect the result of the appeal. Therefore what fell from him is a classic case of *obiter dictum*; although the Supreme Court of Canada always speaks *ex cathedra* and cannot be heard to do so *obiter*, no other court in Canada in my respectful view is accorded the like deference and in the case of others such digressions are without authority. In the second place I also consulted the *Shorter Oxford English Dictionary* to see what is left if the word "reasonable" remains alone and unqualified. The relevant entries for "reasonable" are as follows:

> **"1. endowed with reason (now rare)**
>
> **2. having sound judgement; sensible, sane, also not asking for too much; requiring the use of reason.**
>
> **3. agreeable to reason, not irrational, absurd or ridiculous.**

> **4. not going beyond the limits assigned by reason; not extravagant or excessive"**

I have eliminated the notes as to derivation, but the lexicographers' reliance is upon the word "reason" to which I have previously referred as being unsatisfactory in policy manuals because of its imprecision and subjectiveness. Moreover it is doubtful if this definition imports probability in any particular.

Before leaving the point I should repeat that the term "reasonable and probable grounds" as used in section 455 of the Criminal Code and its predecessors prior to December 12, 1988 dealing with cases in which a justice of the peace may receive informations has appeared in the *Criminal Code of Canada* since its first enactment in 1892 and it may be derived from other concepts as indicated in *Lord Jowitt's Dictionary of English Law* (Second Edition) where "reasonable and probable cause" is defined as:

> **"such grounds as justify anyone in suspecting another of a crime and giving him in custody thereon. Its absence is one of the causes of action in an action for malicious prosecution and its existence is a defence to an action for false imprisonment. After the jury has found the facts the question whether the facts show a reasonable and probable cause is a question of law, not fact, but the judge may leave the finding to the jury in some cases (*McDonald v. Rooke* [1835] 2 Bing. M.C. 217)."**

The same authority defines "malicious prosecution" as:

> **"a prosecution, preferred maliciously, without reasonable or probable cause; the remedy is an action on the case in which damages may be recovered. Damages must be pleaded and proved (Berry v. British Transport Commission [1962] 1 Q.B. 306). The allegation of want of reasonable and probable cause must be expressly proved and cannot be implied; it is for the judge not the jury to determine upon it."**

The *Oxford Companion To Law* (Clarendon Press, 1980) compiled by David M. Walker, Regius Professor of Law at the University of Glasgow defines "reasonable cause" as:

> **"a ground or justification for doing something which commends itself to an individuals reason. In legal context it is frequently combined in the phrase reasonable and probable cause, *probable cause being grounds which are capable of proof.* The question arises in such problems as an action for malicious prosecution or for false imprisonment, where the absence of reasonable and probable cause is an essential of success in the former and its existence is a defence in the latter. Whether there is reasonable and probable cause is a question of law."**

The italics are mine.

Although "reasonable and probable cause" may be derived from the civil actions for malicious prosecution and false imprisonment, the framers of the Criminal Code (of which Sir James Fitzjames Stephen was generally credited to be the chief) thought fit to apply the standard which it imports to the action of laying an information of the commission of an indictable offence. Presumably if the informant or the justice were challenged as to the propriety of their actions in relation to the standard to be observed it would be a question of law for a judge to be decided upon principle and authority. To say that such alteration as has happened here is not a matter of substance is a question for debate.[14]

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[14] I am indebted to Mary Dawson, Q.C. chairman of the Statute Revision Commission and Associate Deputy Minister (Public Law) of the Department of Justice at Ottawa for drawing to my attention the special procedure for bringing into force the supplements to the Revised Statutes of Canada in the following terms:

> "Section 13 of the Revised Statutes of Canada, 1985 Act, chapter 40 (3rd Supp.) require that a supplement to the Revised Statutes be deposited in the office of the Clerk of the Parliaments by the Governor General and brought into force by order of the Governor in Council. This system does not call for the parliamentary procedure referred to in section 7 of the *Statute Revision Act*.

This observation may serve to reinforce the thrust of my concluding sentence.

Appendix M

Uncited Rulings by the Commissioner

[N.B. Only those rulings which required extended reasons are reproduced.]

Appendix M

Application by Shane Michael Earle
for funding for himself and others
June 29, 1989

Shane Michael Earle, applicant, in person

John McCarthy, for the Government of
Newfoundland and Labrador

David C. Day, Q.C. and Clay M. Powell, Q.C.,
for the Royal Commission

THE COMMISSIONER (orally):

I have now to determine the question as to whether the application of Mr. Shane Michael Earle and others for funding, in other words, for the provision of funds for a lawyer to represent him and others whose names are affixed to exhibit C-0007 - that being a letter in which Mr. Harry Kopyto, a barrister and solicitor practising in Toronto has, over the names of the affected parties, made what is tantamount to a demand for a recommendation on my part, to the government of Newfoundland and Labrador that funds should be provided to enable him to represent Mr. Earle and the other people whose names are listed in that exhibit which is dated June 28, 1989, should be granted.

First of all, I should say that I accept the views of Mr. Day and Mr. Powell as to my lack of jurisdiction to order the reimbursement of any costs or the provision of any funds for any party with standing, or anybody else. There is simply nothing in the commission's terms of reference which provides me with any such jurisdiction. As to the recommendations that may be made, I take it that the terms of reference are wide enough to permit a recommendation in due course. At this stage of the proceedings, however, there is nothing on which a recommendation could be based. No doubt, the proceedings of this commission, which amount to an exercise in fact-finding, will be useful to anybody who either has already launched an action against government or contemplates an action against government and will be an economical way of obtaining discovery. Just to what extent Mr. Earle and his associates can be of help to the fact-finding process that this commission has embarked upon is concealed and can only be ascertained as investigation unfolds.

There are precedents for making recommendations. But I entirely agree with what Mr. McCarthy - who has just informed me that his instructions from the provincial government are to the effect that there is no plan to provide funding of this type - has said, which is that the services of commission counsel can be of the greatest help and may be all that are necessary to assist parties with standing before this commission.

In fact I can well remember the days when I first became involved in investigations of this type, that it was the inflexible rule that only commission counsel could put questions to witnesses; that they were available to put such questions, as might be suggested to them, if they thought they were appropriate. At the end of the day, provision was made for applications by people who were affected by the evidence to appear with counsel and make submissions after all the evidence was in. Then, as the years passed, various courts and, I should say, particularly perhaps in the Province of Ontario, found that people with standing should be allowed to cross-examine witnesses called by commission counsel. That, in my opinion, had the regrettable effect of introducing an adversarial aspect to the deliberations of these commissions. However, I think that it no longer can be successfully maintained that the old practice is still supported by authority.

Nonetheless, the position taken by Mr. McCarthy is useful, I think, and consistent with original practice, and I am not bound by any of the decisions that have been made, conceivably by none, in any case, but at least I can say that I am not bound to follow any of the decisions in any other province except those that have fallen from the Supreme Court of Canada and have been decided in the Province of Newfoundland.

On these grounds, and in light of what Mr. McCarthy has communicated, I decline to make any recommendation at this time; particularly under circumstances which could fairly be called premature, before any of the evidence which commission counsel may call has been heard and the imponderables of the situation which might affect the exercise of my discretion are revealed.

So the application for a recommendation in this sense is refused.

Application by Harry Kopyto
to appear as agent for nine
persons granted standing by
the Royal Commission
August 14, 1989

Harry Kopyto, applicant, in person

James R. Chalker, Q.C., for the Law
Society of Newfoundland

David C. Day, Q.C. and Clay M. Powell, Q.C.
for the Royal Commission

THE COMMISSIONER (orally):

At the commencement of proceedings this morning, at this organizational meeting, Mr. Chalker, Q.C. appeared for the Law Society of Newfoundland to speak to an application for standing brought by Miss Hoegg, the Legal Director of the Law Society, in connection with a number of matters arising from the terms of reference of the commission, some of which were undisclosed - and I think that is quite proper before the public hearings of the commission begin - and one of which was disclosed at the conclusion of a number of applications for standing made on the application of the persons involved and recommended by commission counsel. There was indeed no difficulty about giving standing to the Law Society in view of the recommendation of commission counsel and, in due course, all the applications recommended by commission counsel - and indeed that was all the applications - were granted.

In due course, Mr. Harry Kopyto, a barrister and solicitor of the Province of Ontario, advised me that for at least nine or ten of the eleven applications he proposed to appear as counsel at this commission's hearings. Mr. Chalker made it clear that the Law Society was not opposing Mr. Kopyto's appearance on this occasion - not being a hearing of the commission but being an adjourned and resumed organizational meeting. Mr. Kopyto went comprehensively into the situation which arises from the fact that although he has made an application for an occasional appearance certificate under the Law Society's Rules, that has not yet been granted. I am advised that in the normal course it will not be considered by the Law Society until September the 18th, probably a week after the commission's hearings begin. The position of the Law Society was then disclosed by Mr. Chalker and it turns upon the interpretation of *The Law Society Act, 1977*, which is Chapter 77 of the Statutes of that year for this Province, and the relevant portions of Section 85 read like this

> 85.(1) No person shall, unless he is a member in good standing of the Society
>
> (a) practise or act as a barrister or as a solicitor;
>
> (b) act as a barrister or a solicitor in any court;

Mr. Kopyto spent some time in his argument in urging me to find that the words "in any court" must be interpreted as they read and that the word "court" excludes what is proposed here, that Mr. Kopyto should appear as a barrister before this commission. I think that if that was the sole provision this matter would be fairly clear. But Mr. Chalker relies on subsection (a), which says "practise or act as a barrister or as a solicitor" and, although it might be reasonably argued that appearance before this commission was not practising law in this province, it certainly constitutes acting as a barrister on any occasion which might arise in the proceedings before me. Mr. Kopyto commented with disfavour upon the rules enacted pursuant to the provisions of the *Law Society Act* and in particular Rule 7.05, which deals with occasional appearances by members of another bar, and reads as follows, referring to the first subsection

> (1) A member in good standing of the Bar of any other province or territory of Canada may, by application in writing addressed to the Secretary apply for permission to appear as counsel in a court in the Province of Newfoundland in a particular cause or matter and any proceeding incidental thereto.

And he reserved his strongest objections for the third provision. I should say that in Subsection (2) the requirements are set out as to what should be contained in the application for the certificate, and they deal generally with insurance and other matters and the presentation of a Certificate of Good Standing from the governing body of the bar of which the applicant is a member and the provision for a fee of $500.00 returnable if the application is refused. Then subsection (3) says

> (3) Notwithstanding that they are satisfied that the provisions of this Rule have been complied with, and that the circumstances are so extraordinary as to warrant such permission, the Benchers may, in their absolute discretion, grant or refuse permission to the applicant to appear as counsel in the cause or matter specified in the application and any proceeding incidental thereto.

Mr. Kopyto says that this statutory provision is not merely unreasonable but unlawful, and if I had to decide that question I perhaps would be urged to say that if the matter ever came before a court it is possible, perhaps probable, that the exercise of that discretion should be made judicially or quasi-judicially and that the untrammelled discretion, in spite of the Benchers being satisfied that all the provisions had been complied with, is perhaps a rather strong, conceivably indefensible, provision. But I do not think I am confronted with that problem.

I was greatly helped by counsel's arguments, Mr. Kopyto, Mr. Chalker and, if I may say so without drawing any invidious distinctions, particularly the lucid argument of Mr. Day, who pointed out that there were at least three ways that seem to be acceptable in proceeding to represent, at least in a court and before this commission, an interested party. First of all there is the right of any interested party given standing to appear on his own behalf and examine and cross-examine witnesses; secondly, to be represented for this purpose by a barrister or solicitor of this province, and thirdly, to be represented by a barrister or solicitor of some foreign jurisdiction holding the certificate of occasional appearance to which I have referred. Then he pointed out, as indeed Mr. Kopyto had pointed out at great length, that in addition to these alternatives Mr. Kopyto had said that an agent, presumably a lay agent, certainly one not qualified in accordance with the statute and the rules I have referred to, could represent the parties who had been given standing. Mr. Kopyto said that he knew of no statute which prohibited this practice but was unable to say when I asked him if he knew of any statute that authorized the appearance of an agent before a Royal Commission, and indeed I know of none and he did not direct my attention to any one. I can say as a matter of my own experience, having conducted two commissions of this type in my own province, that I never had any application for such an appearance and indeed no interested party ever appeared except by himself or by counsel. The right to counsel of course is to counsel of the choice of the party appearing by counsel and is so well recognized as not to require any further dissertation by me. It is trite law that an interested party can appear by himself or herself or by counsel. In an attempt not to be misinformed or misled by what the word 'counsel' implies, I resorted to that indispensable authority, *Lord Jowitt's Dictionary of English Law* in which the definition of 'counsel' reads as follows

> a general name for practising barristers, used especially in certain locutions. Thus, we speak of "instructing counsel," of "giving a brief to counsel," of "the plaintiff's counsel," and so on, meaning that the instructions or brief are given to a barrister, that the plaintiff in a certain case is represented by a barrister, etc.

Then I went to Stroud's well-known dictionary and apparently the learned editors considered the matter so plain that they did not define 'counsel' at all, except in the sense of the use of the word as in the phrase 'counsel and procure' which is clearly not appropriate to this problem.

Mr. Kopyto also said, urged upon me, that this was an independent Royal Commission, that I was not bound by any provisions of the laws of the province of Newfoundland and that, in the federal sphere at least, he was confident that an agent could appear; a proposition which I find hard to accept on the basis of the information contained in other counsel's arguments. And I say this about the position of this commission. I have already referred on a previous occasion to the fact that it was constituted by royal authority and I now add to that that it is royal authority exerted in the right of the province of Newfoundland and its feet, although it may be free-standing, its feet are solidly planted in the customary and conventional and legal soil of this province. Even were this not the case, I am persuaded by Mr. Day's argument that the authorization of representation by agents would create a condition approaching anarchy and there would be no guarantee that the general efficiency and dispatch of our proceedings would not be threatened by uninstructed, unqualified, and unauthorized personnel. I have no doubt, therefore, that even in the absence of authority I am in a position to find, as one in control of the process of this commission, that it would be undesirable to allow agents to appear and I do find that. And I find that as early as possible in view of the urgency of the matter, although as I have said to counsel in the course of the argument I would like to have had much more time and to have been able to do more research in the matter. However, I have reached this conclusion on the question of the agents without any real reservations or doubts.

As I have said, Mr. Kopyto and Mr. Chalker both advised me that Mr. Kopyto had made an application for the occasional appearance certificate and that in the normal course, and I will be corrected I hope by Mr. Chalker if I am wrong, the matter would not be considered until September the 18th. Is that correct Mr. Chalker?

MR. CHALKER:

I think that is the next regular meeting of the Benchers.

THE COMMISSIONER:

Yes.

MR. CHALKER:

But I understood from Mr. Roil (John F. Roil, Q.C., Treasurer of the Law Society) that there may be an opportunity to call an extraordinary meeting of the Benchers of the Law Society to consider Mr. Kopyto's application prior to the 18th.

THE COMMISSIONER:

Yes, I think you did mention that. Thank you. Mr. Chalker reminds me that it is possible and may be favourably considered that a special meeting might be called in advance of the date of the hearings which is at present set at September 11th before this commission. It would certainly be helpful, particularly to Mr. Kopyto and indirectly to this commission, if the matter were settled before that time.

Appendix M

Generally speaking I hold that the provisions of section 85 of the *Law Society Act* must be complied with and only persons qualified, either as members of the Law Society in good standing or as a member of the bar of a foreign jurisdiction armed with the occasional appearance certificate, alone can act as a barrister before this commission.

Appendix M

Application by Mary Mandville
Executrix of the Last Will of
the Honourable Vincent P. McCarthy
for standing before the Royal Commission
September 11, 1989

James R. Chalker, Q.C., for
Mary Mandville, applicant

David C. Day, Q.C. and
Clay M. Powell Q.C. for
the Royal Commission

THE COMMISSIONER (orally):

It is a peculiarity of the common law of which we are all so proud that any writer of speaker can traduce the dead without suffering any of the penalties or indemnities that the law would impose upon anybody who similarly traduced a living person at the instance of that person. This must be borne in mind in considering the application of Mrs. Mary Mandville, represented by Mr. Chalker, Q.C., executrix of the last will of the Honourable Vincent P. McCarthy, sometime Deputy Minister of Justice and Deputy Attorney General of the province of Newfoundland and subsequently judge of the District Court of that province, now deceased. What appears to be an anomaly and certainly is a *lacuna* in the law has something to be said for it. Certainly from a personal standpoint I have sympathy - and older members will forgive me if I say nobody has more sympathy than I - with the position of the applicant here in trying to maintain or protect the reputation of a forebear, but for reasons that have been given by Mr. Powell I think the application must be rejected. There is no legal interest really involved. Recognizing the right of a legal representative to protect something that the law does not protect would involve the establishment of a dangerous precedent in my view, and I have not really been advised as to any particular aspect of the law which might be applied and give Mrs. Mandville the interest that she would like.

In the *Inquiries Act* of Canada (R.S. 1985, c.I-13, s.13) there has for a long time been a provision that if a commissioner intends to make a finding, or contemplates making a finding, of misconduct or some activity which is discreditable then he must given notice to the person affected and allow that person, either in person or through his or her counsel, to make representations and, if necessary, to call evidence in a contrary sense. That provision was observed by Mr. Justice Spence in the 'Munsinger Inquiry', as I remember. It has since been introduced through the 'McRuer Report'[15] into the *Public Inquiries Act* of Ontario (R.S.O. 1980, c. 411, s. 5) and I think that it may well be in Alberta's inquiries legislation too (*Public Inquiries Amendment Act, 1983*, S.A. 1983, c. 95, s. 2, enacting s. 12 of the *Public Inquiries Act* of Alberta). But such a provision does not appear in the *Public Enquiries Act* of this province[16]. But I am quite prepared to allow, or make provision for, such a course of conduct in this inquiry, subject to whatever objections may be made at the material time. Of course the applicant here can always be present and seek the assistance of commission counsel to ask protective questions. As far as that is concerned Mr. Chalker can always attend with a watching brief. But the status of an interested party, as generally understood as involving the role of a participant, as Mr. Day has said, cannot in my opinion be granted in this case.

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[15] February 7, 1968, Report No.1, vol.1, c.36, pp. 463 to 481.

[16] R.S.N. 1970, c.314.

Appendix M

Renewed application by Mary Mandville
Executrix of the Last Will of
the Honourable Vincent P. McCarthy
for standing before the Royal Commission
November 29, 1989

James R. Chalker, Q.C., for
Mary Mandville, applicant

George Horan, for Government of
Newfoundland and Labrador

Richard Rogers for some former
residents of Mount Cashel Orphanage

David C. Day, Q.C. and
Clay M. Powell Q.C. for
the Royal Commission

THE COMMISSIONER (orally):

On September 11th of this year I made the last of the preliminary rulings on the application by Mrs. Mary Mandville, the executrix for the estate of the Honourable Vincent P. McCarthy, deceased, for standing. At that time, I gave short reasons for rejecting it. I note that at an early stage of those reasons I said this:

> ... for reasons that have been given by Mr. Powell I think the application must be rejected.

I went on to attempt to redeem myself for any appearance of servile compliance with Mr. Powell's opinions - which almost always follows his expression of them - by adding a few reasons of my own. Mr. Chalker, who represented the estate on that occasion, then wrote to commission counsel David C. Day, Q.C. on November 7, 1989 in which he gave a very complete and interesting argument as to why I should reconsider that ruling. His argument was largely based upon a combination of Section 5 of the *Public Inquiries Act* of Ontario (R.S.O. 1980, c.411) which says in its first subsection

> a commission shall accord to any person who satisfies it ...

and goes on to mention standing, and the *Interpretation Act* of this Province (R.S.N. 1970, c.182, s.26 (w)) which defines, as indeed the *Interpretation Act of Ontario* (R.S.O. 1980, c.219) does too, a "person" as including

> a corporation and the heirs, executors, administrators or other legal representatives of the person; ... .

At the time I was doubtful whether this argument was perhaps not a trifle too ingenious to satisfy me on the main point as to whether an estate can have standing in an inquiry of this kind. Taking that, together with Mr. Powell's submission here this morning in which he urges upon me the propriety of doing what the *Royal Commission on the Donald Marshall, Jr. Prosecution* did in Nova Scotia, which was to give standing to the estate of one Donald C. MacNeil, Q.C., I must reconsider the matter, especially as that commission, the decisions of which are not really binding upon me, are nonetheless entitled to very great respect because of the fact its chairman was the Chief Justice of the Trial Division of this Province, and his colleagues were Associate Chief Justice Lawrence A. Poitras of Quebec and the former Chief Justice of the High Court in Ontario, Mr. Justice Gregory T. Evans. He was my chief and colleague for many years.

Taking all these matters into consideration it seems to me that I would be, at this point, somewhat rigid in adhering to my view expressed back at the beginning - I believe on the first day of public hearings of this commission on September 11, 1989. So, I am very glad to be able to say that in the absence of any expression of opinion to the contrary or unfavourable opinion by participants here present or represented, I shall change my mind, as I think I am entitled to do under changed circumstances. The estate of Vincent P. McCarthy who, at the time material to this commission's terms of reference was Deputy Minister of Justice of this province, will be granted standing. I thank Mr. Chalker for his attendance.

Appendix N

Reasons for judgment of the Honourable Mr. Justice Noel dated September 27, 1989

and

Reasons for judgment of the Court of Appeal

Appendix N

FILED SEP 2 7 1989

1989 Nos. 2269, 2272, 2284, 2491
and 2492 St. J.

IN THE SUPREME COURT OF NEWFOUNDLAND
TRIAL DIVISION

BETWEEN:	
EDWARD ENGLISH ALLAN RALPH DOUGLAS KENNY EDWARD FRENCH AND KEVIN SHORT	DAVID ORR, Esq. DAVID HURLEY, Esq. DANIEL W. SIMMONS, Esq. GERALD F. O'BRIEN, Esq.
APPLICANTS	for the Applicants
AND:	
HER MAJESTY THE QUEEN THE ATTORNEY GENERAL OF NEWFOUNDLAND, AND THE PROVINCIAL COURT OF NEWFOUNDLAND	WAYNE GORMAN, Esq.
RESPONDENTS	for the RESPONDENTS
	Hearing: 21 September 1989
	Judgment Delivered: 27 September 1989

ISSUE of abuse of process and the Canadian Charter of Rights and Freedoms as per Judgment of Noel, J.

Appendix N

DECISION OF NOEL, J.

The applicants have applied for relief, in the nature of prohibition and stay of proceedings, in respect of informations laid against them. The grounds relied upon include the grounds that, because of inordinate pre-charge delay, the laying of the informations was an abuse of process and contrary to sections 7 and 11 of the Canadian Charter of Rights and Freedoms.

At the request of all parties, to reduce the likelihood of prejudice in the event of a trial, an order was made restricting publication of evidence and, for the same reason, this decision will state only those facts which are necessary to explain and support it.

In December 1975, a report of child abuse at Mount Cashel Orphanage, which was operated by the Congregation of Christian Brothers and of which congregation the applicants were members, was made to the police. Detective Robert Hillier was assigned to investigate, but the investigation was soon stopped, upon orders of the Chief of Police, J.F. Lawlor, and the Assistant Chief of Police, J.R. Norman.

On 18 December 1975, after the investigation was stopped, Detective Hillier gave his report to the Chief of Police. It recorded the result of his investigation and listed matters which had not been done. Twenty-four boys had been taken from the orphanage to the police station to be interviewed and two of the applicants had been questioned. The report contained direct evidence of criminal misconduct on the part of the applicants.

The Provincial Superior of the Canadian Province of Christian Brothers, Gerard H. McHugh, was notified by Brother D.F. Nash, his representative in this province, that the investigation had begun; and he came to St. John's in December 1975 and met with the Chief of Police, with whom he was already acquainted. He and his representative also met with the Deputy Minister of Justice, Vincent P. McCarthy, and they discussed the subject matter of the investigation. It was agreed that two of the applicants would be removed from the province, and they were. The Provincial Superior testified that the Deputy Minister did not give a commitment that charges would not be laid, but the agreement to remove the two applicants from the province indicates, at least, an understanding that charges would not be laid against the applicants.

On 23 January 1976, the Provincial Superior wrote to the Deputy Minister a letter (exhibit 6) which included these paragraphs:

> "I wish to keep you informed of the community's action concerning Brothers Ralph and English.....
>
> I thank you sincerely for giving Br. Nash and myself the opportunity to discuss the Mount Cashel situation with you. Whenever it is appropriate, I will appreciate hearing from you."

On 3 March 1976, Detective Hillier, pursuant to order, prepared a second report of his investigation for the attention of the Minister of Justice; he was instructed concerning its content. He reported that his investigation had not been completed, on the orders of the Chief of Police and Assistant Chief of Police, and he listed things not done. That report was given to the Chief of Police and sent to the Department of Justice.

A memorandum, dated 18 March 1976, to the Provincial Superior from Brother D.F. Nash (exhibit 2) contained these paragraphs:

> "At the most recent meeting with the Deputy Minister of Justice, Mr. McCarthy, the following points were raised. I have already communicated such to you by phone and am including such again as reminders re: situation at Mt. Cashel:

> 1. Brs. Ted English and Gerry Ralph are not to return to the Province of Newfoundland.
>
> 2. Brs. Kenny and Short are not to be assigned to Mt. Cashel.
>
> 3. .....
>
> 4. There seems to be a need (strongly expressed) that the Congregation make public in some form the fact that the Mt. Cashel scene is very definitely under change and review. This will serve to assure all (friends and otherwise) that the "situation" at Mt. Cashel is definitely at an end and that definite action has been taken."

On 26 January 1977, the Chief of Police, J.F. Lawlor, having retired, the Deputy Minister wrote his successor, Chief of Police, John R. Browne, (exhibit 4):

> "I return herewith your reports dated September 18, 1975, and March 3, 1976, respecting child abuse at Mount Cashel.
>
> I also enclose copies of letters received from Brother McHugh and Reverend Dr. Thomas A. Kane which are self-explanatory. In view of the action taken by the Christian Brothers further police action is unwarranted in this matter."

The reports were for the Department of Justice and, in the usual course, should have been kept in its records. Their return to the Chief of Police was an unusual event.

In conformity with the opinion of the Deputy Minister, expressed in exhibit 4, and the orders of the Chief of Police and Assistant Chief of Police, the investigation was not completed. No further action was taken in the matter until February 1989 when it was brought to the attention of Associate Deputy Attorney General, Robert Hyslop, and he ordered that the investigation be completed. As a result, the subject informations were laid.

A fair assessment of the facts stated leads to the conclusion that the inordinately long delay in laying the informations resulted from arrangements made between the Provincial Superior and the Deputy Minister, and that the decision to terminate the investigation and to take no further action was not made, in good faith, without fear, favour or affection in the administration of justice but for other reasons. It is also fair to find that these arrangements were acquiesced in by the Chiefs of Police and that the applicants were aware of the investigation, their involvement in it, and the arrangements made for their benefit. The pleadings contain general allegations of prejudice, but no evidence of specific prejudice relating to proof of the guilt or innocence of the applicants has been given.

In R. v. Kalani; R. v. Pion (1989), 96 N.R. 191, The Supreme Court of Canada, by majority, decided that in considering the right of an accused person to be tried within a reasonable time, as required by s. 11(b) of The Canadian Charter of Rights and Freedoms, pre-information delay is not a factor to be considered. McIntyre, J., for the majority said, at p. 207:

> "S. 11 limits its operation to the post-information period. Prior to the charge the rights of the accused are protected by the general law and guaranteed by ss. 7, 8, 9 and 10 of the Charter."

In conformity with that ruling, the applicants submitted that they are entitled to the protection of the general law, which gives relief against abuse of process, and s. 7 of the Canadian Charter of Rights and Freedoms which provides:

> "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

In considering the applicants' submission that the laying of the informations was an abuse of process, it is necessary to bear in mind that, generally speaking, no limitation period applies to the laying of an information and, consequently, delay is not, of itself, an abuse of process. In Rourke v. The Queen (1977), 35 C.C.C. (2d) 129, Pigeon, J., for the majority, said, at p. 145:

> "I cannot find any rule in our law that prosecutions must be instituted promptly and ought not to be permitted to be proceeded with if a delay in instituting them may have caused prejudice to the accused. In fact, no authority was cited to establish the existence of such a principle which is at variance with the rule that criminal offences generally are not subject to prescription except in the case of specific offences for which a prescription time has been established by statute. I have to disagree with the view expressed by McIntyre, J.A., that there could be factual situations giving to a trial Judge discretion to stay proceedings for delay. For the reasons I gave in R. v. Osborn (1970), 1 C.C.C. (2d) 482, ... I cannot admit of any general discretionary power in Courts of criminal jurisdiction to stay proceedings regularly instituted because the prosecution is considered oppressive. In fact, I think the correct view is that which was expressed as follows by Viscount Dilhorne in Director of Public Prosecutions v. Humphreys, [1976] 2 All E.R. 497 at pp. 510-1: ....."

The final paragraph of the quotation attributed to Viscount Dilhorne and adopted by Pigeon, J., reads:

> "If there is the power ..... to stop a prosecution on an indictment in limine, it is in my view a power that should only be exercised in the most exceptional circumstances."

In R. v. Jewitt, [1985] 2 S.C.R. 128, at p. 136, Dickson, C.J.C., for the Court, adopted and confirmed the conclusion of the

Ontario Court of Appeal in R. v. Young (1984), 40 C.R. (3d) 289, that:

> "There is a residual discretion in a trial court judge to stay proceedings where compelling an accused to stand trial would violate those fundamental principles of justice which underlie the community's sense of fair play and decency and to prevent the abuse of a court's process through oppressive or vexatious proceedings"; and added the caveat that: "this is a power which can be exercised only in the clearest of cases".

The applicants have shown that there was a long delay between the commencement of the investigation and the laying of the informations, but it has been explained, and there is no evidence of any exceptional circumstance which would lead a reasonable person, with knowledge of all the facts, to find that the laying of the informations was adverse to the community's sense of fair play and decency or oppressive or vexatious. It was not an abuse of process.

In relying upon s. 7 of the Charter, the applicants submitted that the laying of the informations was not in accordance with the principles of fundamental justice because they have been deprived of the right to make a full answer and defence, but no evidence was given to support that submission, other than evidence of the delay. A finding of the alleged breach of s. 7

cannot be founded upon speculation as to what might or might not arise at a trial. Bearing in mind that the prosecution would, if the informations lead to a trial, have the burden of proving guilt beyond a reasonable doubt, the submission under s. 7 is premature. The trial judge will have responsibility to ensure compliance with s. 7 and the Criminal Code, should the occasion arise.

There was also an allegation that the informations were defective in form and substance but counsel made no submissions with respect to it. That, too, is a matter for another forum at another time.

The applications are dismissed.

David Orr, Esq., solicitor for Edward English, Applicant
David Hurley, Esq., solicitor for Allan Ralph, Applicant
Daniel W. Simmons, Esq., solicitor for Douglas Kenny, Applicant
Gerald F. O'Brien, solicitor for Edward French and
Kevin French, Applicants.
Wayne Gorman, Esq., solicitor for the Respondents.

Appendix N

FILED SEP 26 1990

1989 Nos. 170, 174, 176, 177, 179

IN THE SUPREME COURT OF NEWFOUNDLAND
COURT OF APPEAL

BETWEEN:

HB Morgan JA.

EDWARD ENGLISH, DOUGLAS KENNY,
ALLAN RALPH, EDWARD FRENCH AND
KEVIN SHORT APPELLANTS

AND:

HER MAJESTY THE QUEEN RESPONDENT

Coram: Mifflin, Morgan and Gushue, JJ.A.

September 10 & 11, 1990

JUDGMENT OF THE COURT
(delivered by Morgan, J.A.)

This appeal is taken from the decision of Noel, J. refusing an application by each of the appellants for relief in the nature of prohibition and judicial stay of proceedings in respect of Informations laid against them.

Separate Informations dated April 14, June 11, June 27 and August 11, 1989 charged each of the appellants with having committed acts of indecent assault on and gross indecency with certain named males. Most of the offenses were stated to have been committed at some time during a specified time period prior to 1976. Several of the appellants were also charged with assault causing bodily harm, committed within the same time frames.

After election by some of the appellants to be tried by Judge and Jury and by others to be tried by Judge alone, the Provincial Court Judge set the date of each preliminary enquiry. Before any of the preliminary enquiries commenced, each of the appellants applied to the Trial Division for the relief referred to above and they were heard together. Viva voce evidence from a number of witnesses was heard in support of the applications.

The appellants contended before Noel, J. that by reason of the inordinate delay by the Crown in laying the charges and by proceeding against them at this time their rights to make full answer and defence had been seriously prejudiced and that the inordinate delay constituted an abuse of process under the general principles of Canadian law. They further argued that the inordinate delay in laying charges and the subsequent proceedings on the Informations were contrary to sections 7, 11(a) and 11(d) of the Canadian Charter of Rights and Freedoms.

Noel, J. dealt with the applications on the basis that the Court was a court of competent jurisdiction to hear and determine the applications for relief under s. 24(1) of the Charter. He examined the evidence adduced in some detail and concluded that the long delay between the commencement of the investigation and the laying of the charges had been explained and there was no evidence of any exceptional circumstances to warrant a finding "that the laying of the Informations was adverse to the community's sense of fair play and decency or oppressive or vexatious. It was not an abuse of process". He further held that the evidence before him did not support the appellants' submissions that their rights under the Charter had been infringed or violated. He accordingly dismissed the applications. Although Noel, J. did not deal specifically with the question of prohibition, it is implicit in his findings that, in his view, prohibition did not lie in the particular circumstances. We assume that the arguments in respect of relief sought under the Charter and the prohibition sought under the common law were so intermingled as to be inseparable.

The question was not raised before Noel, J. as to whether the applications for Charter relief were properly before the Supreme Court, Trial Division when none of the appellants had been committed for trial in that Court. Nor was it argued on appeal. Accepting but not deciding that the Court was a court of competent jurisdiction to hear the applications for Charter relief, there is no statutory right of appeal from the refusal of the Charter relief sought. As stated by McIntyre, J. in Mills v. The Queen [1986] 1 S.C.R. 863 at p. 959 and restated by him, speaking for a unanimous Court, in Miltzer v. The Queen [1989] 1 S.C.R 1764 at p 1774:

> The question has been raised as to whether there can be something in the nature of an interlocutory appeal in which a claimant for relief under s. 24(1) of the Charter may appeal immediately upon a refusal of his claim and before the trial is completed. It has long been a settled principle that all criminal appeals are statutory and that there should be no interlocutory appeals in criminal matters.

On appeal, the appellants appeared to accept that position. They maintained, however, that part of the relief sought was an order by way of prohibition and s. 784 of the Criminal Code provides a statutory right of appeal from the refusal of such an order. While the applications included a claim for non-prerogative relief under the Charter, an appeal under s. 784 can only apply to the prerogative portions of the applications. That is the only matter before us.

The appellants contend that, in appropriate circumstances, prohibition may lie against an inferior court to prevent it from continuing proceedings that constitute an abuse of process. No authority has been cited where an order was made prohibiting proceedings by way of a preliminary enquiry into criminal charges regularly instituted and in respect of which the accused had elected trial in a superior court, other than on jurisdictional grounds. The order of prohibition sought in this case can only be directed to the preliminary hearing judge. That matter is now academic in respect of the appeals of English, Ralph, French and Short. All of them have since been committed to stand trial and

Indictments have been preferred against them in the Trial Division. It arises, however, in the appeal of Kenny whose preliminary enquiry is still continuing.

The principles governing a judicial stay of proceedings for abuse of process have been clearly stated by the Supreme Court of Canada.

In Keyowski v. R [1988] 1 S.C.R. 657, Wilson, J., speaking for the Court, stated at p. 658

> The availability of a stay of proceedings to remedy an abuse of process was confirmed by this court in R. v. Jewitt (1985), 21 C.C.C. (3d) 7, 20 D.L.R. (4th) 651, [1985] 2 S.C.R. 128. On that occasion the court stated that the test for abuse of process was that initially formulated by the Ontario Court of Appeal in R. v. Young (1984), 13 C.C.C. (3d) 1, 46 O.R. (2d) 620, 40 C.R. (3d) 289. A stay should be granted where "compelling an accused to stand trial would violate those fundamental principles of justice which underlie the community's sense of fair play and decency", or where the proceedings are "oppressive or vexatious" (21 C.C.C. (3d) at p. 14, 20 D.L.R. (4th) 651 at p. 658, [1985] 2 S.C.R. at pp. 136-7). The court in Jewitt also adopted "the caveat added by the Court in Young that this is a power which can be exercised only in the 'clearest of cases'" (p. 14 C.C.C., p. 659 D.L.R., p. 137 S.C.R.).

In the case at bar, the Informations laid charged the appellants with having committed the alleged offences some 14 or 15 years earlier. In their applications for relief, including inter alia an order of prohibition, the appellants stated that the charges now laid against them relate to allegations which were the subject of a police investigation in 1975 and sufficient evidence had been obtained to warrant the laying of charges. A decision, however, was made at that time not to proceed. The appellants contended that the inordinate delay in the laying of charges constituted an abuse of process.

Inordinate delay in the laying of charges is not, of itself, sufficient to establish abuse of process. If, however, it is established that the passage of time has prejudiced an accused in his ability to make full answer and defence, the delay in initiating the proceedings is an important factor to be taken into consideration. That, however, is for the trial judge to decide and the determination of the prejudicial effect of the delay to the accused, if any, must be made in light of the viva voce testimony adduced.

In this case, viva voce evidence was given before Noel, J. touching an alleged undertaking by the Crown that no charges would be laid. Such evidence is relevant in support of an application for relief under the Charter, or on an application for judicial stay of proceedings as an abuse of process under the common law. It cannot, however, form part of the record in respect of the application for prerogative relief. Even if it did fall for consideration in this case, it does not meet the test for abuse of process formulated by the Ontario Court of Appeal in Young, supra, and adopted by Wilson, J. in Keyowski, supra. The evidence led does not substantiate any undertaking by the Crown not to prosecute the appellants. It does not disclose any benefit accruing to the Crown as a result of the termination of the investigation in 1976. Indeed, the only persons to benefit therefrom were the appellants and the religious Order to which they belonged and no real as opposed to apprehended prejudice to the appellants has been shown. Moreover, it is not apparent that the rights of the children involved were given any consideration. In short, the rejection of the applications for prohibition is sustainable on the ground that it has not been demonstrated that the circumstances surrounding the laying of the charges were such as to oust the jurisdiction of the preliminary hearing judge.

Only at trial will all of the circumstances surrounding the laying of the charges be fully explained and analyzed. The trial judge will be in the best position to determine from the evidence precisely what happened and what prejudice, if any, the appellants have suffered thereby. It is at that stage that any injury to the appellants can be redressed.

The appeal is accordingly dismissed.

Mr. David Orr representing Edward English.
Derek Green, Q.C. representing Douglas Kenny
David Hurley representing Allan Ralph
Gerald O'Brien representing Edward French & Kevin Short
Wayne Gorman representing Her Majesty the Queen.

I concur J A
I concur. J.A.

Appendix O

Participants granted standing with Counsel (or as otherwise represented) before the Royal Commission

Participant	Represented by
Brinston, Gerard Joseph	
Burke, Joseph	Marvin R.V. Storrow, Q.C.
Congregation of the Christian Brothers in Canada	M. Francis O'Dea, Q.C.
Connors, Darren Vincent	John J. Harris
Connors, Gregory Patrick	John J. Harris
Connors, Robert Michael	John J. Harris
Earle, Shane Michael	John J. Harris
Earle, William Ronald	
French, Edward	Gerald F. O'Brien, Q.C.
Ghaney, James Frederick	John J. Harris
Government of Newfoundland and Labrador	George P. Horan
Interagency Committee on Violence Against Women	Jennifer Mercer
Kenny, Douglas	J. Derek Green, Q.C.
Mac Isaac, John Earl	John J. Harris

Participant	**Represented by**
Mercer, Gwen	
Roman Catholic Episcopal Corporation of St. John's	Thomas J. O'Reilly, Q.C.
Short, Kevin	Gerald F. O'Brien, Q.C.
Simms, Alvin Joseph	
The Estate of Vincent P. McCarthy, Q.C.	James R. Chalker, Q.C.
The Law Society of Newfoundland	Lois R. Hoegg
The Provincial Advisory Council on the Status of Women, Newfoundland and Labrador	Ann Bell
Working Group on Child Sexual Abuse - Community Services Council	Darlene Scott

Appendix P

Persons who appeared as witnesses before the Royal Commission

Appendix P

Name	**Affiliation**	**Date(s) Appeared**
Alexander, Karen Wanda	employee, Department of Social Services, Newfoundland	13 February 1990 14 February 1990 17 May 1990 18 May 1990
Anderson, Mabel	employee, Department of Social Services, Newfoundland	01 March 1990
Atkins, Samuel Cyril	former employee, Department of Social Services, Newfoundland	14 June 1990
Baird, Carol Anne	mother of former residents of Mount Cashel Orphanage	30 October 1989
Baird, Francis Patrick	former resident, Mount Cashel Orphanage	14 November 1989
Baird, William Malcolm	former resident, Mount Cashel Orphanage	30 October 1989
Barbour, Roy Edison	employee, Department of Social Services, Newfoundland	07 May 1990
Barnes, Kelvin Eugene	former member, Royal Newfoundland Constabulary	31 May 1990
Barron, John Francis	former Christian Brother and superintendent, Mount Cashel Orphanage	30 April 1990
Bellows, Brother Gordon Raphael	member of General Council, Congregation of Christian Brothers, Rome; former teacher; former director of education for Canada-West Indies Province of of Christian Brothers; former Provincial Superior	29 January 1990

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Name	Affiliation	Date(s) Appeared
Boone, Elizabeth Ann	former employee, Department of Social Services, Newfoundland	02 February 1990
Boulding, David Gary	employee, Department of Social Services, Newfoundland	15 June 1990
Bradbury, Robert Barry	former employee, Department of Social Services, Newfoundland	18 September 1989 19 September 1989 22 September 1989 12 October 1989 08 December 1989
Brett, Roy Charles	former minister, Department of Social Services, Newfoundland	14 March 1990
Brinston, Gerard Joseph	former resident, Mount Cashel Orphanage	26 October 1989
Brothers-Hodder, Mary	employee, Department of Social Services, Newfoundland	28 February 1990
Brown, Peter Robert	former resident, Mount Cashel Orphanage	20 October 1989
Bucher, Brother Henry Louis	former superintendent, Mount Cashel Orphanage	22 February 1990
Buckingham, Brother Gordon John	former teacher, Pius X School, St. John's; former member of Mount Cashel community of Irish Christian Brothers	29 September 1989
Buckingham, Herbert Joseph	former barrister and solicitor, Department of Justice, Newfoundland	31 January 1990

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Name	Affiliation	Date(s) Appeared
Burry, Kathryn	relative of the Earle family	25 October 1989
Bursey, Marion Pearl	former employee, Department of Justice, Newfoundland	22 January 1990
Burt, Ivey Jeannette	employee, Department of Social Services, Newfoundland	05 April 1990
Burt, Liska Lou	employee, Department of Social Services, Newfoundland	05 June 1990
Butt, Tammy	former resident of a foster home, Newfoundland	12 June 1990
Byrne, John Patrick	crown attorney, Department of Justice, Newfoundland	22 January 1990
Callahan, Sharron Anne	employee, Department of Social Services, Newfoundland	22 September 1989 25 September 1989 12 October 1989 30 January 1990 26 March 1990 27 March 1990
Caule, Sister Helen Patricia	social worker, Department of Health, Newfoundland	22 January 1990
Chancey, Brenda Marie	former employee, Department of Justice, Newfoundland	05 December 1989 30 January 1990
Chaulk, Dean Jeffrey	member, Royal Newfoundland Constabulary	10 April 1990
Clowe, Leonard Gerard	member, Royal Newfoundland Constabulary	01 December 1989 15 March 1990
Coady, Edward Joseph	chief of police, Royal Newfoundland Constabulary	11 April 1990 12 April 1990
Coady, Elizabeth Noreen	employee, Department of Social Services, Newfoundland	26 March 1990

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Name	Affiliation	Date(s) Appeared
Connors, Darren Vincent	former resident, Mount Cashel Orphanage	16 November 1989 17 November 1989
Connors, Gregory Patrick	former resident, Mount Cashel Orphanage	24 October 1989
Connors, John Thomas	former director of public prosecutions, Department of Justice, Newfoundland	16 January 1990 17 January 1990
Connors, Robert Michael	former resident, Mount Cashel Orphanage	25 September 1989 20 October 1989
Cooke, Colleen	employee, Department of Justice, Newfoundland	17 January 1990
Cooper, Dr. Austin Richard	pediatrician; microbiologist; associate professor of pediatrics and pathology School of Medicine, Memorial University of Newfoundland	12 June 1990
Cosgrove, Carolyn Joan	former employee, Department of Social Services, Newfoundland	09 April 1990
Crawford, Elizabeth	employee, Department of Social Services, Newfoundland	11 September 1989 04 April 1990
Crawford, Hugh Stead	employee, Department of Social Services, Newfoundland	14 February 1990
Crewe, Alice (Walters)	former employee, Department of Social Services, Newfoundland	12 October 1989 07 December 1989
Croke, Patricia Ann	employee, Department of Social Services, Newfoundland	01 March 1990
Dalton, Zita Margaret	member, Royal Newfoundland Constabulary	14 March 1990
Davis, Ferdinand Anthony	former employee, Department of Social Services, Newfoundland	01 November 1989

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Name	**Affiliation**	**Date(s) Appeared**
Delaney-Smith, Paulette Marie	member, Royal Canadian Mounted Police, formerly stationed in Newfoundland	07 June 1990 08 June 1990
Devine, Brendan	former employee, Department of Social Services, Newfoundland	01 November 1989 02 November 1989
Devine, Sheila	former assistant director of child welfare and assistant deputy minister, Department of Social Services, Newfoundland	24 January 1990 15 February 1990 10 April 1990 14 May 1990
Dingwell, Lillian	employee, Department of Justice, Newfoundland	15 January 1990
Dinn, Reverend John Michael	relative of foster parents, St. John's, Newfoundland	16 May 1990
Dominic, Dr. Rufus Gerard	pediatrician, Dr. Charles A. Janeway Child Health Centre; consultant to other hospitals in St. John's; clinical assistant professor of pediatrics, Memorial University of Newfoundland	25 May 1990
Driscoll, Ruby Bertha	former administrator, Pleasantville Youth Centre, St. John's, Newfoundland	31 May 1990
Dunne, Roberta Joyce	employee, Department of Social Services, Newfoundland	05 April 1990
Durdle, Cynthia Muriel	former resident of a foster home in Newfoundland	01 June 1990
Dwyer, Allen	former chief of police, Royal Newfoundland Constabulary	04 December 1989
Earle, Donna Christine	employee, Department of Social Services, Newfoundland	06 June 1990
Earle, Richard Gerard	former resident, Mount Cashel Orphanage	28 September 1989

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Name	**Affiliation**	**Date(s) Appeared**
Earle, Shane Michael	former resident, Mount Cashel Orphanage	17 October 1989 18 October 1989 14 November 1989
Earle, William Michael	father of former residents of Mount Cashel Orphanage	15 September 1989 18 September 1989
Earle, William Ronald	former resident, Mount Cashel Orphanage	22 September 1989 27 September 1989 11 October 1989 23 October 1989
English, Craig Edward	former resident, Mount Cashel Orphanage	22 March 1990
Fahey, Raymond Joseph	former barrister and solicitor, Department of Justice, Newfoundland	08 December 1989
Faour, Alphonsus Edward	former barrister and solicitor, Department of Justice, Newfoundland	04 April 1990
Ford, Lloyd Alexander	member, Royal Newfoundland Constabulary	10 April 1990
Foster, Catherine	former social worker, Department of Health, Newfoundland	31 January 1990
Fradsham, Dr. Boyce Tennyson	assistant deputy minister, Department of Education, Newfoundland	14 September 1989
Ghaney, James Frederick	former resident, Mount Cashel Orphanage	02 November 1989 04 December 1989
Goodyear, Cyril James	former associate deputy attorney general and director of public prosecutions, Department of Justice, Newfoundland	27 February 1990
Gray, David Stephen	member, Royal Newfoundland Constabulary	06 June 1990
Greene, Cyril Joseph	former deputy minister, Department of Justice, Newfoundland	30 April 1990

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Name	**Affiliation**	**Date(s) Appeared**
Griffith, Raymond Wayne	member, Royal Canadian Mounted Police, Newfoundland	22 May 1990
Guilbeault, Deidre Ann	private citizen, Labrador	09 April 1990
Haire, Terrence	employee, Department of Social Services, Newfoundland	08 December 1989
Hamilton, Neil Michael	employee, Department of Social Services, Newfoundland	07 December 1989 25 January 1990 30 January 1990 31 January 1990 15 February 1990 02 May 1990
Hamilton, Patrick	employee, Department of Social Services, Newfoundland	07 December 1989
Hamlyn, Douglas Murray	member, Royal Canadian Mounted Police, Newfoundland	22 May 1990 23 May 1990
Hatch, Christopher James	former teacher, Pius X School, St. John's, Newfoundland	20 September 1989 22 September 1989
Hatcher, Peggy Marjorie	employee, Department of Social Services, Newfoundland	28 February 1990
Hepditch, Brother Francis Gerard	Brother Provincial, Canada-West Indies Province of Christian Brothers	11 September 1989 12 September 1989
Herder, Roma	former social worker, Dr. Charles A. Janeway Child Health Centre, Newfoundland	31 January 1990
Hickey, Thomas Valentine	former minister, Department of Social Services, Newfoundland	23 March 1990 26 March 1990
Hickman, Chief Justice Thomas Alexander	former minister, Department of Justice, Newfoundland	29 March 1990 30 March 1990

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Name	**Affiliation**	**Date(s) Appeared**
Higgins, Dr. Gordon Andrew	medical doctor who formally attended to residents of Mount Cashel Orphanage	12 February 1990
Hill, John Barry	former barrister and solicitor, Department of Justice, Newfoundland	15 January 1990 16 January 1990
Hillier, Robert	former member, Royal Newfoundland Constabulary	21 November 1989 22 November 1989 12 June 1990
Hobeika, Dr. Chaker Ferguson	pediatrician; Dr. Charles A. Janeway Child Health Centre, Newfoundland	12 February 1990
Hollett, Vernon Harold	former deputy minister, Department of Social Services, Newfoundland	26 February 1990
Horne, George Frederick	investigator, Royal Commission Of Inquiry Into The Response Of The Newfoundland Criminal Justice System To Complaints	19 January 1990 09 April 1990
Hutton, Dr. Charles Joseph	clinical associate professor, School of Medicine, Memorial University of Newfoundland; chief provincial forensic pathologist, Newfoundland; former director of laboratories, Dr. Charles A. Janeway Child Health Centre, Newfoundland	03 May 1990 04 May 1990
Hyslop, Judge Robert Buchanan	former assistant deputy attorney general, Department of Justice, Newfoundland	13 December 1989
Ivey, Gordon Edward	relative of former resident of Mount Cashel Orphanage	15 November 1989
Jagoe, Allan Stuart	member, Royal Canadian Mounted Police, Newfoundland	27 March 1990
Jewell, Mary Loretta	former crown attorney, Department of Justice, Newfoundland	27 March 1990

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Name	**Affiliation**	**Date(s) Appeared**
Kaiser, Emerson Havelock	superintendent, Royal Canadian Mounted Police, Newfoundland	15 May 1990 23 May 1990 26 June 1990
Kashyap, Dr. Omesh	psychiatrist, St. John's, Newfoundland	01 February 1990 12 February 1990
Kelly, John Geoffrey	former director of public prosecutions, Department of Justice, Newfoundland	23 January 1990
Kelly, William Patrick	former journalist, The Evening Telegram, St. John's, Newfoundland	30 November 1989
Kennedy, Francis Louise	relative of former residents of Mount Cashel Orphanage	15 November 1989
Kielly, Alexander Thomas	lieutenant, Royal Newfoundland Constabulary	29 March 1990
Lahey, Wayne Michael	former resident, Mount Cashel Orphanage	17 November 1989
Lawlor, John Francis	former chief of police, Royal Newfoundland Constabulary	29 November 1989 30 November 1989 23 January 1990
LeBreton, Kenneth Francis	member, Royal Canadian Mounted Police, Newfoundland	15 March 1990
LeDrew, Austin Azariah	former member, Royal Newfoundland Constabulary	28 November 1989
Leonard, Brian Patrick	former resident, Mount Cashel Orphanage	30 October 1989
Lundrigan, Brenda Ann Marie	relative and friend of former resident of Mount Cashel Orphanage	20 September 1989 19 October 1989
Lynch, Brother John Barry	superintendent, Mount Cashel Orphanage	03 May 1990

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Name	**Affiliation**	**Date(s) Appeared**
Macaulay, George Bewick	former barrister and solicitor and deputy minister, Department of Justice, Newfoundland	18 January 1990
Mac Isaac, John Earl	former resident, Mount Cashel Orphanage	30 October 1989
Maclean, Brian Anthony	member, Royal Canadian Mounted Police, Newfoundland	07 June 1990
Mahoney, Mr. Justice John W.	former minister and attorney general, Department of Justice, Newfoundland	20 March 1990
Mallard, Carl Edward	former resident of a foster home in Newfoundland	02 May 1990
Martin, Gerard Joseph	barrister and solicitor, Corner Brook, Newfoundland	10 April 1990
Martin, Peter Damian	member, Royal Canadian Mounted Police, Newfoundland	30 November 1989
McCarthy, Dr. Francis Paul	physician in family practice formerly serving at Wabush Clinic and Captain William Jackman Memorial Hospital, Labrador	09 April 1990
McGrath, John Wilfred	former barrister and solicitor, Department of Justice, Newfoundland	06 December 1989
McGuire, Gerald Thomas	member, Royal Canadian Mounted Police, Newfoundland	19 September 1989
McHugh, Brother Gerard Gabriel	superior general, Congregation of Christian Brothers; former Brother Provincial, Canada-West Indies Province of Christian Brothers	14 December 1989 15 December 1989
Mercer, Gwen	participant, St. John's, Newfoundland	05 June 1990

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Name	**Affiliation**	**Date(s) Appeared**
Mercer, Keith James	former barrister and solicitor and assistant deputy minister, Department of Justice, Newfoundland	06 December 1989
Mills, Thomas Gerard	crown attorney, Department of Justice, Newfoundland	22 March 1990
Mitchell, Helen Marie	employee, Department of Justice, Newfoundland	17 January 1990
Molloy, Diane	employee, Department of Social Services, Newfoundland	12 March 1990
Molloy, Father Kevin	priest, Roman Catholic Archdiocese of St. John's, Newfoundland	25 October 1989
Monaghan, Michael Joseph Patrick	barrister and solicitor, Corner Brook, Newfoundland	10 April 1990
Moore, Gerald Samuel	writer, journalist and former owner of a monthly magazine called The Town Crier, St. John's, Newfoundland	29 May 1990
Morris, Sylvia Sandra	employee, Department of Social Services, Newfoundland	28 February 1990
Murphy, Anthony Joseph	former minister, Department of Social Services, Newfoundland	13 March 1990
Murphy, Doctor Brian	private medical practitioner, formally in Grand Falls, Newfoundland	29 May 1990
Myers, Bernadette	employee, Department of Social Services, Newfoundland	01 March 1990 23 May 1990
Nash, Gerald Edward	former resident, Mount Cashel Orphanage	26 October 1989
Noel, Albert John	barrister and solicitor, Department of Justice, Newfoundland	06 December 1989

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Name	**Affiliation**	**Date(s) Appeared**
Noonan, Madam Justice Mary Elizabeth	former barrister and solicitor, Department of Justice, Newfoundland	20 February 1990 21 February 1990
Noonan, Patrick	former member, Royal Canadian Mounted Police, Newfoundland	13 June 1990
Norberg, Leonard Leroy	former employee, Department of Social Services, Newfoundland	01 November 1989
Norman, Terrence Leo	member, Royal Canadian Mounted Police, Newfoundland	11 June 1990
Nurse, Noel Herbert	member, Royal Canadian Mounted Police, Newfoundland	08 June 1990
O'Brien, Dianne Eileen	private citizen, Newfoundland	16 January 1990
O'Brien, John Dereck	former resident, Mount Cashel Orphanage and foster homes in Newfoundland	20 September 1989 26 September 1989 27 September 1989 28 September 1989 19 October 1989
O'Brien, Ronald Patrick	former resident, Mount Cashel Orphanage and foster homes in Newfoundland	16 November 1989
O'Driscoll, William Joseph	executive officer, Catholic Education Council, St. John's, Newfoundland	14 September 1989
O'Flaherty, Frances	former director of social work, Dr. Charles A. Janeway Child Health Centre; present director of social work, Waterford Hospital, St. John's, Newfoundland	31 January 1990
O'Keefe, Doctor Dermot	priest of the Roman Catholic Archdiocese of St. John's; former secretary to the Roman Catholic Archbishop of St. John's; former vicar general of the Roman Catholic Archdiocese of St. John's, Newfoundland	13 June 1990

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Name	Affiliation	Date(s) Appeared
O'Regan, Mr. Justice Seamus Bernard	former crown attorney, Department of Justice, Newfoundland	07 May 1990
Orser, Weldon Harold	investigator, Royal Commission Of Inquiry Into The Response Of The Newfoundland Criminal Justice System To Complaints	26 September 1989 12 October 1989 17 November 1989 20 November 1989 04 December 1989 05 December 1989 07 December 1989 08 December 1989 11 December 1989 19 January 1990 22 January 1990 26 January 1990 29 January 1990 31 January 1990 12 February 1990 13 February 1990 15 March 1990 21 March 1990 05 April 1990 06 April 1990 04 May 1990 24 May 1990 13 June 1990
Ouellette, Michael Leo	member, Royal Canadian Mounted Police, Newfoundland	07 June 1990
Patey, Dr. Paul	a provider of diversified family practice services (including the Dr. Charles A. Janeway Child Health Centre); professor of family practice, Memorial University of Newfoundland; former assistant and associate professor at Memorial University of Newfoundland	13 October 1989
Patten, Ardith Louise (Dunford)	former employee, Department of Justice, Newfoundland	23 February 1990

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Name	**Affiliation**	**Date(s) Appeared**
Pearcey, Robert William	former member, Royal Newfoundland Constabulary	15 January 1990 13 June 1990
Peet, Elaine Susan	employee, Department of Justice, Newfoundland	05 December 1989
Penney, John Joseph	former resident, Mount Cashel Orphanage	13 June 1990
Penney, Ronald Giles	former deputy minister, Department of Justice, Newfoundland	06 December 1989 21 March 1990
Penney, Wayne Joseph	employee, Department of Social Services, Newfoundland	10 April 1990
Pike, Arthur	former member, Royal Newfoundland Constabulary	23 November 1989
Pike, Derek	member, Royal Newfoundland Constabulary	13 October 1989
Pike, Gilbert Kenneth	former deputy minister, Department of Social Services, Newfoundland	13 March 1990
Pitcher, Ralph	member, Royal Newfoundland Constabulary	13 October 1989 16 October 1989 16 January 1990
Pittman, Edgar Arthur	former chief of police, Royal Newfoundland Constabulary	01 December 1989
Pope, George	former assistant deputy minister, Department of Social Services, Newfoundland	26 February 1990
Powell, Frederick Kenneth	employee, Department of Social Services, Newfoundland	07 May 1990 08 May 1990
Power, Carol Anne	employee, Royal Newfoundland Constabulary	23 November 1989

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Name	**Affiliation**	**Date(s) Appeared**
Power, Gerald Alphonsus	former social worker, Department of Social Services; former employee, Mount Cashel Orphanage	20 March 1990
Power, Leonard Patrick	superintendent, Royal Newfoundland Constabulary	12 September 1989 13 September 1989 14 March 1990 21 March 1990 22 March 1990 04 April 1990
Preshyon, Gideon Joseph	former resident, Mount Cashel Orphanage	17 November 1989
Preshyon, Gregory James	former resident, Mount Cashel Orphanage	28 September 1989
Pumphrey, Ian Cameron	former resident, Mount Cashel Orphanage	25 October 1989
Pumphrey, John Dwyer	former resident, Mount Cashel Orphanage	19 October 1989
Pumphrey, Ronald Joseph	father of former residents of Mount Cashel Orphanage	25 October 1989
Quilty, Shirley Louise	employee, Department of Social Services, Newfoundland	06 June 1990
Quinlan, Jerome	employee, Department of Social Services, Newfoundland	11 December 1989
Randell, Edwin Donald	former chief of police, Royal Newfoundland Constabulary	28 November 1989 29 November 1989
Rice, Leo Gerard	former resident, Mount Cashel Orphanage	30 October 1989
Richards, Ronald James	former crown attorney and deputy minister, Department of Justice, Newfoundland	11 December 1989

Name	Affiliation	Date(s) Appeared
Riche, Chesley	former volunteer worker, Mount Cashel Orphanage	15 September 1989
Roberts, Patricia	employee, Department of Social Services, Newfoundland	14 November 1989 01 February 1990 02 May 1990 03 May 1990
Roche, Judge William Michael	former crown attorney, Department of Justice, Corner Brook, Newfoundland	15 March 1990 16 March 1990
Roche, Richard James	former chief of police, Royal Newfoundland Constabulary	04 December 1989
Rogers, Clarence Walter	former executive assistant to the minister, Department of Justice, Newfoundland	08 December 1989
Rosales, Dr. Teodoro O.	associate professor, Department of Pediatrics, Faculty of Medicine, Memorial University of Newfoundland; clinic geneticist/pediatrician; former chief resident of pediatrics, Dr. Charles A. Janeway Child Health Centre, Newfoundland	05 April 1990 06 April 1990
Ruelokke, Violet Dorene	former executive director, Association of Registered Nurses of Newfoundland	14 June 1990
Seabright, Gordon Wilburn	former provincial court judge, Newfoundland	28 March 1990
Seymour, Phyllis Louise	social worker consultant, Department of Social Services, Newfoundland	14 March 1990
Seymour, Sandra	employee, Department of Social Services, Newfoundland	28 February 1990
Simms, Alvin Joseph	former resident, Mount Cashel Orphanage	04 December 1989

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Name	**Affiliation**	**Date(s) Appeared**
Simms, Frank John	former director of child welfare, Department of Social Services, Newfoundland	11 October 1989 15 February 1990 16 February 1990 19 February 1990 20 February 1990 05 April 1990
Sinclair, Catherine (Cahill)	former employee, Department of Social Services, Newfoundland	26 September 1989 30 January 1990
Smith, Gerald Wright	former employee, Department of Justice, Newfoundland	12 December 1989
Somerton, Kimberley Lillyian Ann	former resident of foster homes in Newfoundland	11 June 1990
Squires, Frederick George	former employee, Department of Justice, Newfoundland	05 December 1989
Stapleton, Margaret Geraldine	employee, Department of Social Services, Newfoundland	13 October 1989 30 January 1990
Stapleton, Terrence Joseph	employee, Department of Social Services, Newfoundland	12 March 1990 13 March 1990
Strickland, Veronica	mother of former residents of Mount Cashel Orphanage	15 November 1989
Summers, Carol Anne (Earle)	mother of former residents of Mount Cashel Orphanage	29 September 1989 20 October 1989
Tabor, Gerald Gordon	sergeant, Royal Canadian Mounted Police, Newfoundland	20 March 1990
Taylor, William John	superintendent, Royal Newfoundland Constabulary	30 November 1989
Thistle, Allan	deputy chief of police, Royal Newfoundland Constabulary	29 November 1989 08 May 1990

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Name	**Affiliation**	**Date(s) Appeared**
Tizzard, Ronald Patrick	chairman of the board of a child welfare group home in Newfoundland	04 June 1990
Tobin, Derek George	former resident, Mount Cashel Orphanage	27 November 1989
Tobin, James Robert	former resident, Mount Cashel Orphanage	16 November 1989
Traverse, Shirley	mother of former residents of Mount Cashel Orphanage	27 November 1989
Turner, Brother Timothy Patrick	assistant superintendent of Mount Cashel Orphanage; superior of Mount Cashel community of Irish Christian Brothers, Newfoundland	12 March 1990
Twyne, Freeman J.	lieutenant, Royal Newfoundland Constabulary	29 March 1990
Urquhart, Murray Donald	member, Royal Canadian Mounted Police, Newfoundland	20 March 1990
Vivian, Herbert Alan	executive secretary, Royal Commission Of Inquiry Into The Response Of The Newfoundland Criminal Justice System To Complaints	26 January 1990 04 April 1990 28 May 1990
Wakeham, Robert Joseph	former journalist, The Evening Telegram, St. John's, Newfoundland	30 November 1989
Wallis, Carolann Mary	employee, Department of Justice, Newfoundland	22 January 1990
Walsh, Andre Joseph	former resident, Mount Cashel Orphanage	24 October 1989
Walsh, John	former employee, Department of Justice, Newfoundland	08 December 1989

Appendix P

Name	**Affiliation**	**Date(s) Appeared**
Walsh, Rita Angela	nurse, formerly with the Dr. Charles A. Janeway Child Health Centre; former volunteer worker, Mount Cashel Orphanage	28 May 1990
Wells, Jean	former employee, Department of Social Services, Newfoundland	23 October 1989 21 March 1990 09 April 1990
Wheeler, Cynthia Lois	former resident of foster homes in Newfoundland	17 May 1990
Whelan, William	superintendent, Roman Catholic School Board, St. John's	13 September 1989 14 September 1989
White, Shirley Julia (Stephenson)	employee, Department of Social Services, Newfoundland	13 February 1990
Whitten, Catherine Michelle	employee, Department of Social Services, Newfoundland	24 May 1990
Williams, John Cyril	former resident, Mount Cashel Orphanage	19 September 1989 20 September 1989 27 September 1989 23 October 1989
Wiseman, Eric Colin	former member, Royal Newfoundland Constabulary	29 November 1989
Witness - In Camera		20 October 1989 23 October 1989
Witness - In Camera		27 November 1989
Woodrow, Raymond Anthony	employee of a child welfare group home in Newfoundland	04 June 1990
Yetman, Chesley	former member, Royal Newfoundland Constabulary	24 November 1989

Appendix Q

Persons participating in panels before the Royal Commission

20 June 1990: Investigation and Prosecution of Complaints:

Flynn, Colin Joseph	director of public prosecutions, Department of Justice, Newfoundland
Kaiser, Superintendent Emerson Havelock	officer in charge, criminal operations, "B" Division, Royal Canadian Mounted Police
Power, Superintendent Leonard Patrick	officer in charge, criminal investigation division, Royal Newfoundland Constabulary

20 June 1990: Identifying the Complainant and Complaint:

Ulsh, Corporal Lillian R.	member of Fredericton City Police Department, youth and victim and witness sections; adviser, organizer, coordinator and lecturer on child abuse investigations
Wells, Mary	official of the Institute for the Prevention of Child Abuse, Training Division, Toronto; former private practitioner, North Toronto Counselling Services; former coordinator of support counselling programs, Metropolitan Toronto Special Committee on Child Abuse; former social worker; author and lecturer on child abuse investigations, treatment and other related subjects

Yuille, Dr. John C.	professor of experimental psychology, history of psychology, forensic psychology, University of British Columbia; researcher, forensic psychology, victim and witness memory, suspect memory, child sexual abuse, interview techniques, learning and memory, psychological profiling; consultant and author in related and other fields

21 June 1990: Recruitment and Training:

Dr. Dennis Kimberley	associate professor, school of social work, Memorial University of Newfoundland; clinical practitioner including professional services to youth and adult victims of physical and sexual abuse; consultant and author; former executive director of the Canadian Association of School of Social Work
Lynch, Frederick	instructor, Atlantic Police Academy and Justice Institute, Holland College, Charlottetown, Prince Edward Island
Pike, Gilbert Kenneth	chairman, Newfoundland Public Service Commission; former deputy minister, Department of Social Services, Newfoundland
Thompson, D.A. Rollie	associate professor of law, Dalhousie Law School, Nova Scotia; researcher and author; principal consultant,

	Department of Community Services, assisting in the preparation of the Report of the Department of Community Services Legislation Committee In Respect To *The Childrens Services Act*; former member of committee responsible for drafting a new *Children and Family Services Act*, Nova Scotia

22 June 1990: State Response (No. 1)

Clarke, Mary	chairman of board of directors of a St. John's child welfare group home; organizer and instructor with youth groups; former operator of a childrens' day care centre
Lee, George Norbert	president, Provincial Foster Parents Association; foster parent, Newfoundland
Rabinowitz, Melba	program director, Daybreak Parent Child Centre in St. John's; former private practitioner - behaviour management interventions for behaviourally disordered children; former consultant, coordinator, instructor in related fields

22 June 1990: Study of Child Sexual Abuse in Canada

Rogers, Rix G.	special adviser to the Minister of National Health and Welfare on child sexual abuse in Canada; author of the report *Reaching For Solutions*,

	(Ministry of Supply and Services Canada, 1990); former national chief executive officer of the Y.M.C.A.

25 June 1990: Judicial Response

Avis, Nick	barrister and solicitor; member and past president of the committee on family violence, Corner Brook, Newfoundland
Collins, Q.C., William A.	barrister and solicitor, St. John's, member of the Canadian Human Rights Commission; former member and president of the Newfoundland Human Rights Association
Lundrigan, Wanda Gail	chief adult probation officer, Department of Justice, Newfoundland
Smyth, James Joseph	barrister and solicitor, St. John's, Newfoundland

25 June 1990: Social Services Response

Cooper, Dr. Austin Richard	physician, Dr. Charles A. Janeway Child Health Centre; pediatrician, microbiologist; associate professor of pediatrics and pathology, School of Medicine, Memorial University of Newfoundland
McCormack, Marilyn	supervisor, Children's Protection Services Unit, Department of Social Services, Newfoundland

Snow, Sergeant Elizabeth Constance	member, Royal Newfoundland Constabulary, Criminal Investigation Division
Spracklin, Q.C., Lynn E.	barrister and solicitor, Department of Justice; counsel for Department of Social Services, Newfoundland

26 June 1990: State Response (No.2)

Greene, Jocelyn Denise	social worker, Waterford Hospital; residential counsellor, Emmanuel House, providing individual and group counselling to residents including survivors of childhood sexual abuse; former probation officer; former assistant director, Department of Social Work, Dr. Charles A. Janeway Child Health Centre; member of board of directors for Newfoundland Association of Social Workers
McConnell, Susan	program supervisor for adolescent program, Dr. Thomas Anderson Centre; chairperson of Social Action Committee, Canadian Mental Health Association; former counselling coordinator, Kirby House - a shelter for battered women and children

Morris, Richard J.	counsellor and member of management committee, St. John's Adolescent Health Counselling Services; private practice counsellor and mental health consultant; former counsellor with Unified Family Court

26 June 1990: R.C.M. Police Training

Kaiser, Superintendent Emerson Havelock	officer in charge, criminal operations, "B" Division, Royal Canadian Mounted Police, Newfoundland

Appendix R

List of Exhibits

Appendix R

Exhibit Number	**Date Entered**	**Description**
C-0001	28.06.89	Letters Patent constituting the Royal Commission dated 01 June 1989
C-0001A	23.01.90	Minutes of Executive Council containing a change in the terms of reference
C-0002	28.06.89	public notice of Commission's organizational meeting
C-0003	28.06.89	affidavit confirming publication of notice in newspapers
C-0004	28.06.89	notice of Commission's organizational meeting - Newfoundland Gazette, Vol.64, No.24, dated 16 June 1989
C-0005	28.06.89	application for standing by the Government of Newfoundland and Labrador
C-0006	28.06.89	application for standing by the Congregation of The Christian Brothers in Canada
C-0007	28.06.89	application for standing by Shane Earle

Exhibit Number	Date Entered	Description
C-0008	28.06.89	application for standing by Joseph Burke
C-0009	28.06.89	application for standing by the Provincial Advisory Council on the Status of Women
C-0010	28.06.89	application for standing by the Interagency Committee on Violence Against Women
C-0011	28.06.89	letter dated 20 June 1989 to Shane Earle from Newfoundland Legal Aid Commission
C-0012	14.08.89	application for standing by the Roman Catholic Episcopal Corporation of St. John's
C-0013	14.08.89	application for standing by Douglas Kenny
C-0014	14.08.89	application for standing by Darren Connors
C-0015	14.08.89	application for standing by John MacIsaac
C-0016	14.08.89	application for standing by James Ghaney
C-0017	14.08.89	application for standing by Alvin Simms

Appendix R

Exhibit Number	**Date Entered**	**Description**
C-0018	14.08.89	application for standing by The Law Society of Newfoundland
C-0019	14.08.89	application for standing by Gerard Brinston
C-0020	14.08.89	application for standing by Robert Connors
C-0021	14.08.89	application for standing by Gregory Connors
C-0022	11.09.89	notice of public hearings by the Commission - Newfoundland Gazette, Vol.64, No.35, dated 01 September, 1989
C-0023	11.09.89	affidavit containing publication of notice of public hearings in newspapers
C-0024D	25.09.89	printed copy of Exhibit C-0024E
C-0024E	25.09.89	overhead transparency of chart captioned "Organizational Chart for the Department of Social Services, St. John's District Office, 1975"
C-0025	11.09.89	annual report for the calendar year 1975, Department of Social Services
C-0026	11.09.89	annual report for the calendar year 1976, Department of Social Services

Exhibit Number	Date Entered	Description
C-0027B	12.09.89	printed copy of Exhibit C-0027C
C-0027C	12.09.89	overhead transparency of chart captioned "Organizational Chart for Mount Cashel Orphanage, 1975"
C-0028D	13.09.89	printed copy of Exhibit C-0028E
C-0028E	13.09.89	overhead transparency of chart captioned "Organizational Chart for the Newfoundland Constabulary, 1975"
C-0029	12.09.89	annual report for the calendar year 1975, Newfoundland Constabulary
C-0030	12.09.89	annual report for the calendar year 1976, Newfoundland Constabulary
C-0031	13.09.89	application for standing by Edward French and Kevin Short
C-0032B	14.09.89	printed copy of Exhibit C-0032C
C-0032C	14.09.89	overhead transparency of chart captioned "Organizational Chart for the St. John's Roman Catholic School Board, 1975"
C-0033B	14.09.89	printed copy of Exhibit C-O033C

Exhibit Number	**Date Entered**	**Description**
C-0033C	14.09.89	overhead transparency of chart captioned "Organizational Chart for the Roman Catholic Education Committee (Teacher's Certification), 1975"
C-0034	14.09.89	constitution of Roman Catholic Education Council, 1969
C-0035	14.09.89	constitution of Roman Catholic Board of Examiners
C-0036	14.09.89	printed copy of Exhibit C-0036A
C-0036A	14.09.89	overhead transparency of chart captioned "Organizational Chart for the Department of Education (Teacher's Certification), 1975"
C-0037	15.09.89	order of temporary wardship for Shane Earle dated May 10, 1973
C-0038	15.09.89	order of permanent wardship for William Ronald Earle dated 20 November 1973
C-0039	15.09.89	decree absolute between William Michael Earle, petitioner, and Carol Ann Earle, respondent dated 11 September 1974
C-0040	15.09.89	letter dated 06 February 1976 to William Earle from Mrs. G. Stapleton, Department of Social Services

Exhibit Number	Date Entered	Description
C-0041	15.09.89	order of permanent wardship for Shane Earle dated 18 March 1976
C-0042	18.09.89	circular No. 28 '73, Department of Social Services, "Re: Organizational Structure - Department of Social Services" dated 13 April 1973
C-0043	18.09.89	circular No. 29 '73, Department of Social Services "Re: Guidelines Relating to Child Abuse" from F.J. Simms dated 13 April 1973
C-0044	18.09.89	circular No. 24 '74, Department of Social Services "Re: Mount Cashel, An Institution For The Care of Roman Catholic Boys" from F.J. Simms dated 04 March 1974
C-0045	18.09.89	letter dated 24 September 1974 to F.J. Simms from Miss C. Cahill
C-0046	18.09.89	letter dated 13 September 1974 to Miss C. Cahill from F.J. Simms
C-0047	18.09.89	manual of policy and procedures, chapter two, "Child Welfare" June 1974 to December 1975, Department of Social Services

Appendix R

Exhibit Number	Date Entered	Description
C-0048	18.09.89	appendices "A" to "F" (August 1970) to Exhibit C-0047 (consisting of various form letters regarding licensing of foster homes and the boarding of children), Department of Social Services
C-0049	18.09.89	letter dated 23 October 1975 "Re: Mount Cashel" to F.J. Simms from Robert Bradbury and Mrs. S. Callahan
C-0050	19.09.89	notes dated 07 December 1975 by Cpl. G.T. McGuire concerning a visit to the home of Carol Earle and a complaint of physical abuse of Shane Earle
C-0051	19.09.89	constitution of The Roman Catholic Educational Committee adopted 24 October 1989 and as amended in 1975
C-0052	19.09.89	letter dated 18 September 1975 to F.J. Simms from Robert Bradbury - "Re: Clothing Requirement - Mount Cashel Orphanage"
C-0053	19.09.89	circular No. 84 dated 14 August 1974, Department of Social Services "Re: Child Care Caseload Report Form 8-609 - Revised 7-73"
C-0054	26.09.89	printed copy of Exhibit C-0054A

Exhibit Number	Date Entered	Description
C-0054A	26.09.89	overhead transparency of chart captioned "Table 1 - **The Child Welfare Act**, 1972 - Apprehension/ Wardship of Child - Principle Time Requirements [May, 1972 to December, 1976]"
C-0055	26.09.89	compilation of documents - "From the Mount Cashel file kept at Social Services Headquarters, Confederation Building, from February, 1952 to February 5, 1975" [note: others were added during the day and have been attached to back cover of bound volume]
C-0055A	26.09.26	a 1971 report to the Department of Social Services, Province of Newfoundland and Labrador from Ms. Ramona Nelson, a federal child welfare & youth services consultant, concerning the administration and management of Mount Cashel Orphanage
C-0056	12.10.89	case record from Department of Social Services on Shane Earle dated 08 December 1975 and 09 December 1975
C-0057	13.10.89	annual reports for year ending 31 December 1975, Newfoundland Constabulary, Criminal Investigation Division 1975

Exhibit Number	Date Entered	Description
		- dated 02 March 1976, signed Chesley Yetman
		- dated 15 January 1976, signed Eric Avery and Chesley Yetman
		- dated 26 February 1976, signed F. Cahill and Chesley Yetman
		- dated 13 January 1976, signed Jerome J. Corcoran and Chesley Yetman
		- dated 12 January 1976, signed E.H. Saint and Chesley Yetman
		- dated 26 February 1976, signed Arthur Pike and Chesley Yetman
		- dated 26 February 1976 (second report), signed Arthur Pike and Chesley Yetman
		- dated 24 February 1976, signed Robert Hillier and Chesley Yetman
		- dated 07 January 1976, signed Ralph Pitcher and Chesley Yetman
		- dated 25 February 1976, signed Allan Thistle and Chesley Yetman
		- dated 26 January 1976, signed Frank Cahill and Chesley Yetman
		- dated 06 February 1976, signed Edwin Miller and Chesley Yetman
		- dated 29 January 1976, signed E. Miller and Chesley Yetman

Exhibit Number	**Date Entered**	**Description**
		- dated 16 January 1976, signed L.P. Power and Chesley Yetman - dated 06 January 1976, signed Kelvin E. Barnes and Chesley Yetman - dated 15 January 1976, signed Gordon Clarke and Chesley Yetman - dated 09 January 1976, signed Bert Nash and Chesley Yetman - dated 09 January 1976, signed Clyde Gill and Chesley Yetman - dated 06 January 1976, signed Clyde Gill and Chesley Yetman - dated 09 January 1976, signed George Simmons and Chesley Yetman - dated 07 January 1976, signed Alex Kielly and Chesley Yetman - dated 26 January 1976, signed P. Waterman and Chesley Yetman - dated 26 January 1976, signed S.H. Wentzell and Chesley Yetman - dated 12 January 1976, signed William Taylor and Chesley Yetman
C-0058	13.10.90	curriculum vitae of Dr. Paul Patey

Appendix R

Exhibit Number	Date Entered	Description
C-0059	13.10.89	out-patient medical examination report from The Dr. Charles A. Janeway Child Health Centre concerning Shane Earle (signed by Dr. Paul Patey on 08 December 1975)
C-0060	13.10.89	original cellophane tracings of the buttocks of Shane Earle made by Dr. Paul Patey
C-0060A	13.10.89	overhead transparency of cellophane tracings of the buttocks of Shane Earle
C-0060B	13.10.89	printed copy of cellophane tracings of the buttocks of Shane Earle
C-0061	13.10.89	copy of medical report concerning Shane Earle by Dr. Paul Patey dated 08 December 1975
C-0062	13.10.89	typewritten medical report concerning Shane Earle dated 08 December 1975 as received by the commission from Royal Newfoundland Constabulary (second copy)
C-0063	13.10.89	selected photocopies of Newfoundland Constabulary occurrence reports July to December 1975 - extracts from bound ledger
C-0064	13.10.89	sample of citizen complaint form, Newfoundland Constabulary

Exhibit Number	Date Entered	Description
C-0065	13.10.89	occurrence ledger July to December 1975, Newfoundland Constabulary (source of Exhibit C-0063)
C-0066	17.10.89	summary of adolescent care of Shane Earle with related Social Services documentation
C-0067	18.10.89	edited Mount Cashel child progress reports concerning Shane Michael Earle
C-0068	18.10.89	edited written statement dated 17 February 1989 given by Shane Michael Earle to Royal Newfoundland Constabulary
C-0069	18.10.89	copy of editorial from The Sunday Express, dated 12 March 1989 - entitled "Miscarriage at Mount Cashel: Where was the rule of law?"
C-0070	19.10.89	summary of adolescent care of John Dereck O'Brien
C-0071	19.10.89	written statement dated 14 December 1975 given by Dereck O'Brien to Newfoundland Constabulary

Exhibit Number	**Date Entered**	**Description**
C-0072	19.10.89	publication for the Catholic Children's Aid Society of Metropolitan Toronto captioned **Now we're in care! What are our Rights and Responsibilities?** - A Guide for Children and Teens in Residential Care (Queens Printer, Ontario, 1988)
C-0073	19.10.89	publication by Ontario Ministry of Community and Social Services entitled **Children's Rights and Responsibilities under The Child and Family Services Act - A Guide for Residential Caregivers** (Queens Printer, Ontario, 1988)
C-0074	19.10.89	written statement dated 11 January 1976 given by Brenda Ann Marie Lundrigan to Newfoundland Constabulary
C-0075	19.10.89	second written statement dated 11 January 1976 given by Brenda Ann Marie Lundrigan to Newfoundland Constabulary
C-0076	19.10.89	summary of adolescent care of John Dwyer Pumphrey
C-0077	19.10.89	written statement dated 15 December 1975 given by John Pumphrey to Newfoundland Constabulary

Exhibit Number	Date Entered	Description
C-0078	20.10.89	written statement dated 10 December 1975 given by Carol Earle to Newfoundland Constabulary
C-0079	20.10.89	summary of adolescent care of William Ronald Earle with related Social Services documentation
C-0080	20.10.89	summary of adolescent care of Robert Michael Connors
C-0080A	23.10.89	amendment to page 1 of Exhibit C-0080
C-0081	20.10.89	written statement dated 12 December 1975 given by Robert Connors to Newfoundland Constabulary
C-0082	20.10.89	written statement dated 13 December 1975 given by Robert Connors to Newfoundland Constabulary
C-0083	20.10.89	written statement dated 12 December 1975 given by Peter Brown to Newfoundland Constabulary
IC-0084	20.10.89	in camera exhibit
IC-0085	23.10.89	in camera exhibit
IC-0086	23.10.89	in camera exhibit
IC-0087	23.10.89	in camera exhibit

Exhibit Number	Date Entered	Description
IC-0088	23.10.89	in camera exhibit
C-0089	23.10.89	written statement dated 13 December 1975 given by William Earle to Newfoundland Constabulary
C-0090	23.10.89	written statement dated 15 December 1975 given by John Williams to Newfoundland Constabulary
C-0091	24.10.89	list of superintendents of Mount Cashel from 1964 to 1975 & selected pages from Exhibit C-0055
C-0092	24.10.89	document entitled "Assignments at Mount Cashel - Information from Brother Hepditch" (as provided to Royal Newfoundland Constabulary on 02 March 1989)
C-0093	24.10.89	summary of adolescent care of Andre Joseph Walsh with related Social Services documentation
C-0094	24.10.89	written statement dated 14 December 1975 given by Andre Walsh to Newfoundland Constabulary
C-0095	24.10.89	summary of adolescent care of John Cyril Williams with related Social Services documentation

Exhibit Number	Date Entered	Description
C-0096	24.10.89	summary of adolescent care of Gregory Patrick Connors with related Social Services documentation
C-0097	24.10.89	written statement dated 12 December 1975 given by Gregory Connors to Newfoundland Constabulary
C-0098	24.10.89	written statement dated 13 December 1975 given by Gregory Connors to Newfoundland Constabulary
C-0099	24.10.89	one page unsigned (incomplete) written statement by Gregory Connors as requested on 11 March 1989 by Lieutenant Freeman Twyne, Royal Newfoundland Constabulary
C-0100	25.10.89	sample of statement form (RNC-026), Royal Newfoundland Constabulary
C-0101	25.10.89	written statement dated 06 April 1989 given by Kathryn Burry to Royal Newfoundland Constabulary
C-0102	25.10.89	summary of adolescent care of Ian Cameron Pumphrey with related Social Services documentation
C-0103	25.10.89	written statement dated 12 December 1975 given by Ian Pumphrey to Newfoundland Constabulary

Exhibit Number	Date Entered	Description
C-0104	26.10.89	summary of adolescent care of Jerry (Gerard) Joseph Brinston with related Social Services documentation
C-0105	26.10.89	written statement dated 13 December 1975 given by Jerry Joseph Brinston to Newfoundland Constabulary
C-0106	26.10.89	summary of adolescent care of Gerald Edward Nash with related Social Services documentation
C-0107	26.10.89	notes of interview by Detective R. Hillier, Newfoundland Constabulary, with Gerald Nash dated 14 December 1975
C-0108	30.10.89	summary of adolescent care of Leo Gerard Rice with related Social Services documentation
C-0109	30.10.89	written statement dated 14 December 1975 given by Leo Gerard Rice to Newfoundland Constabulary
C-0110	30.10.89	extracts from publication entitled "Christian Brothers of Ireland 75th Anniversary" (see Exhibit C-0133)
C-0111	30.10.89	summary of adolescent care of William Malcolm Baird with related Social Services documentation

Exhibit Number	Date Entered	Description
C-0112	30.10.89	summary of adolescent care of John Earl MacIsaac with related Social Services documentation
C-0113	01.11.89	extracts from Exhibit C-0055
C-0114A	04.12.89	summary of adolescent care of James Frederick Ghaney with related Social Services documentation
C-0115	14.11.89	letter dated 14 April 1976 to F.J. Simms from Mrs. P. Roberts "Re: Carol Baird"
C-0116	14.11.89	summary of adolescent care of Francis Patrick Baird with related Social Services documentation
C-0116A	15.11.89	amendment to page one of Exhibit C-0116
C-0117	14.11.89	notes (undated) of interview by Detective R. Hillier, Newfoundland Constabulary, with Malcolm Baird
C-0118	15.11.89	documentation concerning placement/adoption/ward agreements for Lundrigan children
C-0119	16.11.89	summary of adolescent care of James Robert Tobin with related Social Services documentation

Appendix R

Exhibit Number	Date Entered	Description
C-0120	16.11.89	summary of adolescent care of Darren Connors with related Social Services documentation
C-0120A	17.11.89	amendment to page 1 of Exhibit C-0120
C-0121	16.11.89	summary of adolescent care of Ronald Patrick O'Brien with related Social Services documentation
C-0121A	27.11.89	amendment to Exhibit C-0121
C-0122	17.11.89	medical records from The Dr. Charles A. Janeway Child Health Centre concerning Wayne Lahey
C-0123	17.11.89	summary of adolescent care of Gideon Joseph Preshyon with related Social Services documentation
C-0124	20.11.89	edited written statement dated 12 December 1975 given by Mr. "B" to Newfoundland Constabulary
C-0125	20.11.89	edited written statement dated 12 November (year not indicated) given by Mr. "P" to Newfoundland Constabulary
C-0126	20.11.89	edited written statement dated 12 December 1975 given by Mr. "J" to Newfoundland Constabulary

Exhibit Number	Date Entered	Description
C-0127	20.11.89	edited written statement dated 13 December 1975 given by Mr. "O" to Newfoundland Constabulary
C-0128	20.11.89	edited written statement dated 14 December 1975 given by Mr. "E" to Newfoundland Constabulary
C-0129	20.11.89	edited written statement dated 15 December 1975 given by Mr. "D" to Newfoundland Constabulary
C-0130	20.11.89	edited written statement dated 14 December 1975 given by Mr. "R" to Newfoundland Constabulary
C-0131	20.11.89	summary of adolescent care of Wayne Lahey with related Social Services documentation
C-0132	20.11.89	book entitled **Christian Brothers Jubilee**, 1876-1926, 50th anniversary publication (Robinson and Company, St. John's, Newfoundland, 1926)
C-0133	20.11.89	book entitled **Christian Brothers of Ireland**, 1876-1951, 75th anniversary publication (Guardian Press, St. John's, Newfoundland, 1952)

Exhibit Number	**Date Entered**	**Description**
C-0134	20.11.89	commemorative booklet entitled **Journey into a New Century** published in 1976 by the Coordinating Centennial Committee, illustrating the history of the Apostolate of the Irish Christian Brothers in Canada
C-0135	20.11.89	book entitled **The Brothers are Coming**, a post-centennial publication by the Christian Brothers ex-pupils centennial committee (Robinson-Blackmore, St. John's, Newfoundland, 1978)
C-0136	20.11.89	document entitled "The Christian Brothers of Ireland in Canada"
"L"	21.11.89	unedited report dated 18 December 1975 prepared by Detective Robert Hillier, Newfoundland Constabulary, with copies of written statements provided by Mount Cashel residents
C-0137	21.11.89	edited version of Exhibit "L"
"M"	21.11.89	unedited report dated 03 March 1976 prepared by Detective Robert Hillier, Newfoundland Constabulary
C-0138	21.11.89	edited version of Exhibit "M"

Exhibit Number	Date Entered	Description
C-0139	21.11.89	chart outlining sequence of events commencing with complaint by Chesley Riche regarding Shane Earle on 07 December 1975 to original report prepared on 18 December 1975 by Detective Robert Hillier, Newfoundland Constabulary
C-0140	23.11.89	excerpts from transcript of oral judgment by Magistrate J. Leclair, "Between Her Majesty The Queen & Thomas Farrell" dated 08 February 1979
C-0141	23.11.89	transcript of oral judgment by Magistrate J. Leclair, "Between Her Majesty The Queen & Thomas Farrell" dated 08 February 1979
C-0142	23.11.89	transcript of in camera evidence given by Arthur Pike on 10 April 1979 at the "Public Inquiry Into Release and Publication of Police Reports into Fire at Elizabeth Towers, St. John's" (Volume IV/A, April 10, 1979)
C-0143	27.11.89	summary of adolescent care of Edward Gerard Baird with related Social Services documentation
C-0144	27.11.89	summary of adolescent care of Mr. "E" with related edited Social Services documentation

Exhibit Number	**Date Entered**	**Description**
C-0144A	22.03.90	amendment to Exhibit C-0144
C-0145	27.11.89	summary of adolescent care of Mr. "O" with related edited Social Services documentation
C-0145A	02.05.90	summary of adolescent care of Roy Joseph O'Brien
C-0146	27.11.89	summary of adolescent care of Mr. "B" with related edited Social Services documentation
C-0147	27.11.89	summary of adolescent care of Mr. "R" with related edited Social Services documentation
C-0148	27.11.89	summary of adolescent care of Mr. "D" with related edited Social Services documentation
C-0149	27.11.89	summary of adolescent care of Mr. "P" with related edited Social Services documentation
C-0150	27.11.89	summary of adolescent care of Mr. "J" with related edited Social Services documentation
IC-0151	27.11.89	in camera exhibit
IC-0152	27.11.89	in camera exhibit

Exhibit Number	Date Entered	Description
C-0153	28.11.89	summary of service of Austin Azariah Bishop LeDrew
C-0154	28.11.89	copy of two photographs depicting the location in September 1945 of Newfoundland Constabulary offices at Fort Townshend, St. John's
C-0155	28.11.89	overhead transparency captioned "Complaints/ Investigations - Newfoundland Constabulary 1975-1976" showing the route of certain complaints to receipt from a citizen; to an investigator; to the Chief of Police; to arrival at the Department of Justice.
C-0155A	28.11.89	printed copy of Exhibit C-0155
C-0156	29.11.89	summary of service of Eric Colin Wiseman
C-0157	29.11.89	memorandum dated 13 October 1987 from Chief of Police E.J. Coady, Royal Newfoundland Constabulary, to all divisions concerning "Duty Assignments for Deputy Chiefs F.E. Flemming and A. Thistle"
C-0158	29.11.89	documentation from Royal Newfoundland Constabulary dated 08 November 1989 detailing the total strength and vacancies of the force

Exhibit Number	Date Entered	Description
C-0159	29.11.89	memorandum dated 16 January 1989 from Deputy Chief, A. Thistle, Royal Newfoundland Constabulary, to all divisions concerning "Directive No.1.126 - Police Notebooks"
C-0160	29.11.89	memorandum dated 02 May 1989 from Deputy Chief, A. Thistle, Royal Newfoundland Constabulary, to all divisions concerning "Police Procedures for laying charges and bringing matters before the courts"; together with related letter from Robert Hyslop, Assistant Deputy Minister, Department of Justice, dated 25 April 1989, and a copy of Chapter 3 of the "Prosecutor, An Inquiry Into the Exercise of Discretion" by Brian Grosman
C-0161	29.11.89	summary of service of John Lawlor
C-0162	30.11.89	letter dated 11 June 1987 from Chief E.J. Coady, Royal Newfoundland Constabulary, to Robert B. Hyslop, Assistant Deputy Minister, Department of Justice "Re: Destruction of Criminal Records, Royal Newfoundland Constabulary"

Exhibit Number	Date Entered	Description
C-0163	30.11.89	transit slip from Royal Canadian Mounted Police dated 10 June 1987, with attachments, to Deputy Chief Coady, Royal Newfoundland Constabulary, concerning record destruction policy
C-0164	01.12.89	publication entitled **The Newfoundland Constabulary** by Arthur Fox (Robinson Blackmore Printing and Publishing Limited, Newfoundland, 1971)
C-0165	01.12.89	selected readings concerning the Newfoundland legal system and policing in Newfoundland
C-0166	01.12.89	example of a criminal index form, Royal Newfoundland Constabulary
C-0167	01.12.89	example of a file charge-out card (form R.N.C. 047), Royal Newfoundland Constabulary
C-0168	04.12.89	summary of service of Allan Dwyer
C-0169	04.12.89	medical records on James F. Ghaney from St. John's General Hospital
C-0170	04.12.89	edited written statement dated 31 July 1989 given by James Frederick John Ghaney to Royal Newfoundland Constabulary

Exhibit Number	**Date Entered**	**Description**
C-0171	04.12.89	summary of adolescent care of Alvin Joseph Simms with related Social Services documentation
C-0172	04.12.89	summary of adolescent care of Peter Robert Brown with related Social Services documentation
C-0173	04.12.89	summary of adolescent care of Derek George Tobin with related Social Services documentation
C-0174	04.12.89	summary of service of Edwin Donald Randell
C-0175	04.12.89	summary of service of Leonard Clowe
C-0176	04.12.89	edited statement dated 12 December 1975 given by (person's name deleted) to Detective Robert Hillier, Newfoundland Constabulary
C-0177	05.12.89	document entitled "Young Persons Residing at Mount Cashel Orphanage - December 1975"
C-0178	05.12.89	edited transcript of testimony given by a witness during in camera hearings on 27 November 1989 before the Royal Commission

Exhibit Number	Date Entered	Description
C-0179	05.12.89	file captioned "Mount Cashel - Re: Child Abuse" (included in the file are three letters - one to Chief of Police Browne, Newfoundland Constabulary, from Deputy Minister Vincent P. McCarthy dated 26 January 1977; one to Deputy Minister McCarthy from Brother G. G. McHugh dated 23 January 1976 and one letter dated 15 January 1976 to Brother McHugh from Rev. Fr. Thomas A. Kane of House of Affirmation Inc. - an international therapeutic center for clergy)
C-0179A	05.12.89	letter dated 26 January 1977 to Chief of Police, Newfoundland Constabulary, from Vincent P. McCarthy, Deputy Minister of Justice
C-0179B	05.12.89	letter dated 23 January 1976 to Vincent McCarthy from Brother G. G. McHugh
C-0179C	05.12.89	letter dated 15 January 1976 to Brother Gerard McHugh from Thomas A. Kane
C-0180	05.12.89	memorandum dated 10 July 1975 to Vincent P. McCarthy, Deputy Minister of Justice, from F.G. Squires "Re: Organization Charts" (Department of

Exhibit Number	Date Entered	Description
		Justice) with related charts and memorandum dated 24 July 1975 from George B. Macaulay, Assistant Deputy Minister
C-0181	07.12.89	copies of edited correspondence dated 30 December 1976 to J. Quinlan from Jean Wells "Re: Louisa Lundrigan child of Mrs. Veronica (Tobin) Lundrigan; letter dated 05 January 1976 to Jean Wells from J. Quinlan; letter dated 11 January 1977 to William Dyke from C. R. Payne; letter dated 14 January 1977 to Jerome Quinlan from Neil Hamilton; letter to J. Quinlan from Jean Wells (duplicate of above with note from S. Devine); letter dated 20 January 1977 to Calvin Payne from Andrew Moriarity; letter dated 01 February 1977 to W. Dyke from C.R. Payne
C-0182	07.12.89	overhead transparency of chart captioned "Allegation 5"
C-0182A	07.12.89	printed copy of Exhibit C-0182
C-0182B	08.12.89	printed copy of page 2 of Exhibit C-0182

Exhibit Number	Date Entered	Description
C-0183	07.12.89	copy of edited letter dated 25 July 1975 to F.J. Simms from Alice Walters, (as obtained from Social Services District Office, St. John's)
C-0184	07.12.89	copy of edited letter dated 25 July 1975 to F.J. Simms from Alice Walters (as obtained from Social Services Headquarters Office, Confederation Building)
C-0185	07.12.89	copy of letter dated 12 August 1975 to T. Haire, Social Services District Administrator, St. John's, from Neil Hamilton
C-0186	07.12.89	overhead transparency of chart captioned "Allegation 3"
C-0186A	07.12.89	printed copy of Exhibit C-0186
C-0187	07.12.89	overhead transparency of chart captioned "Letter dated 25 July 1975"
C-0187A	07.12.89	printed copy of Exhibit C-0187
C-0188	07.12.89	overhead transparency of chart captioned "Letter dated 25 July 1975, Letter dated 12 August 1975; Requested Report"
C-0188A	07.12.89	printed copy of Exhibit C-0188

Exhibit Number	**Date Entered**	**Description**
C-0189	07.12.89	overhead transparency of chart captioned "Allegation 1"
C-0189A	07.12.89	printed copy of Exhibit C-0189
C-0189B	08.12.89	printed copy of page 2 of Exhibit C-0189 (Examined Sources)
C-0190	07.12.89	overhead transparency of chart captioned "Allegation 2"
C-0190A	07.12.89	printed copy of Exhibit C-0190
C-0190B	08.12.89	printed copy of page 2 of Exhibit C-0190 (Examined Sources)
C-0191	07.12.89	overhead transparency of chart captioned "Allegation 4"
C-0191A	07.12.89	printed copy of Exhibit C-0191
C-0191B	08.12.89	printed copy of page 2 of Exhibit C-0191
C-0192	07.12.89	letter dated 06 December 1989 to Commission Investigator, Weldon Orser, from P.L. Hamilton, Director of Personnel, Department of Social Services, "Re: Mr. Frank J. Simms - Leave Records - 01 April 1975 to 31 December 1975"

Exhibit Number	Date Entered	Description
C-0193	07.12.89	letter dated 06 December 1989 to Commission Investigator, Weldon Orser, from P.L. Hamilton, Director of Personnel, Department of Social Services, "Re: Appointment of Ms. Sharron Callahan and Ms. Cathy Cahill"
C-0194	07.12.89	summary of adolescent care of Carlo James, Diono Francesco, and Dino Rocco Santuccione with related Social Services documentation
C-0195	07.12.89	summary of service of Neil Hamilton
C-0196	08.12.89	record of date of commencement and termination of employment of Robert Bradbury, Department of Social Services, and summary of leave for calendar year 1975
C-0197	08.12.89	floor plan of the Department of Justice offices, Confederation Building, as of December 1975
C-0198	11.12.89	circular no. 15-75, Department of Social Services dated 24 February 1975 from H.D. Hollett "Re: Reorganization of Field Services"

Exhibit Number	Date Entered	Description
C-0199	11.12.89	extracts from selected records of Department of Social Services Registry of Child Abuse covering period from 01 April 1975 to 31 March 1976
C-0200	11.12.89	example of form used by Department of Social Services Registry of Child Abuse to record details of reported incidents of child abuse
C-0201	11.12.89	edited report by Detective Sgt. Leonard Power, Royal Newfoundland Constabulary concerning "David Jerome Burton, Breach of Section 156 C.C.C. or 24(1), **Welfare of Children Act**"
C-0202	11.12.89	copy of file cover from Department of Justice captioned "David Jerome Burton, Br. Sec. 156 or Br. 24(1) W.C.A." with various handwritten notations
C-0203	11.12.89	copy of letter dated 02 November 1982 to R.J. Roche, Chief of Royal Newfoundland Constabulary, Attention: Detective Sgt. Leonard Power from Ronald J. Richards, Senior Crown Attorney, "Re: David Jerome Burton"

Exhibit Number	Date Entered	Description
C-0204	11.12.89	volume I of transcript of evidence - "Her Majesty The Queen vs. David Jerome Burton" - heard in Provincial Court, St. John's on 17, 18, 19, November 1982
C-0204A	11.12.89	volume II of Exhibit C-0204
C-0205	11.12.89	memorandum dated 10 November 1982 from Robert B. Hyslop, Assistant Director of Public Prosecutions, to Mary Noonan, Solicitor for Department of Justice, "Re: Mount Cashel Orphanage Investigation - R. v. David Burton"
C-0206	11.12.89	copy of edited letter dated 15 December 1982 to F.J. Simms, Director of Child Welfare, from Karen Alexander
C-0207	11.12.89	copy of crown attorney's case report dated 19 November 1982 to Royal Newfoundland Constabulary from R. J. Richards "Re: David Jerome Burton"
C-0208	11.12.89	copy of notice of application dated 19 November 1982, "for leave to appeal from conviction and sentence in the matter of David Jerome Burton"

Exhibit Number	Date Entered	Description
C-0209	11.12.89	copy of Supreme Court of Newfoundland, Court of Appeal, (1982 No.228) oral judgment by Mifflin, C.J.N. on 01 December 1982 (Coram: Mifflin, C.J.N., Gushue and Mahoney, J.J.A.) - "Between Her Majesty The Queen, respondent, and David Jerome Burton, appellant"
C-0210	11.12.89	letter dated 09 December 1982 to R.J. Roche, Chief of Police of Royal Newfoundland Constabulary, from Ronald J. Richards, Senior Crown Attorney, "Re: David Jerome Burton"
C-0211	13.12.89	copy of article from the Daily News on 17 May 1979 concerning testimony given at the "Soper Inquiry" by Detective Sgt. Arthur Pike, Royal Newfoundland Constabulary
C-0212	13.12.89	copy of article from The Evening Telegram on 17 May 1979 entitled "In Camera Testimony released by the Judge"
C-0213	13.12.89	letter to Joyce King, Secretary, Department of Justice, from Robert Hyslop, dated 14 February 1989; note to file from Robert Hyslop dated 14 February, 1989; 3 page letter to Chief E.J. Coady from Robert Hyslop dated

Exhibit Number	Date Entered	Description
		14 February 1989 "Re: Alleged cover-up by the Department of Justice - charges involving Mount Cashel Orphanage, 1975-1976"; 2 page letter to Honourable Lynn Verge from Robert Hyslop dated 14 February 1989 "Re: Complaint of Homosexual Acts and Child Abuse at Mount Cashel"; press release; note to file from Robert Hyslop dated 17 February 1989; 4 page statement of Robert B. Hyslop, Associate Deputy Attorney General, Department of Justice, dated 17 February 1989, note to file from Robert Hyslop, dated 22 February 1989
C-0214	14.12.89	brief history of Mount Cashel Orphanage prepared in mid 1974 and entered in evidence during testimony of Brother G.G. McHugh (authorship not shown)
C-0215	14.12.89	report entitled "Mount Cashel Advisory Board Report To Delegates of Provincial Chapter, July 30, 1977"
C-0216	14.12.89	copy of letter dated 18 November 1974 to Honourable A. Murphy, Minister of Department of Social Services, from Brother G.G. McHugh

Exhibit Number	Date Entered	Description
C-0217	14.12.89	letter to Honourable A.J. Murphy from Brother G.G. McHugh dated 20 November 1974; letter to Rev. Brother G.G. McHugh from A.J. Murphy dated 13 February 1975; letter to Rev. Brother G.G. McHugh from T.M. Doyle dated 04 September 1975; letter to Honourable T.M. Doyle, M.H.A. from G.G. McHugh dated 10 September 1975; letter to Mr. M.F. Jackman from Br. R.L. MacKenzie dated 22 September 1975
C-0218	14.12.89	copy of letter dated 10 January 1976 to Rev. Br. D.F. Nash from G.G. McHugh
C-0219	14.12.89	copy of report of a preliminary meeting on 08 March 1976 of the Mount Cashel Advisory Board
C-0220	14.12.89	notice of a meeting of Mount Cashel Advisory Board to be held on 11 March 1976 together with agenda, list of participants, and a copy of the terms of reference for the board
C-0221	14.12.89	copy of memorandum dated 18 March 1976 to Br. G.G. McHugh from Br. D.F. Nash "Subject - Reminders Mount Cashel"

Exhibit Number	Date Entered	Description
C-0222	14.12.89	letter dated 10 April 1976 - "Dear Dip" (Brother D. Kenny) from "Gabe" (Brother G. McHugh)
C-0223	14.12.89	minutes of Mount Cashel Advisory Board meeting held on 12 April 1976 as recorded by Brother Gale, Secretary
C-0224	14.12.89	letter dated 26 May 1979 "Dear Gabe" (Brother G. McHugh -unsigned)
C-0225	15.01.90	summary of service of Robert William Pearcey
C-0226	15.01.90	copies of Royal Newfoundland Constabulary in-service training material "Re: General Reporting and Recording, effective January 1, 1981"
C-0227B	17.05.90	staff calendar 1975-1976, Department of Justice
C-0228	15.01.90	summary of service of John Richard Browne (deceased)
C-0229	15.01.90	summary of service of John Norman (deceased)
C-0230	15.01.90	summary of service of John Barry Hill
C-0231B	16.01.90	printed copy of Exhibit C-0231C

Exhibit Number	Date Entered	Description
C-0231C	16.01.90	overhead transparency of chart captioned "Organization of Department of Justice, 1975"
C-0232	15.01.90	copy of article from The Evening Telegram on 07 January, entitled - "24 Sex charges laid against 12 young men"; copy of article from the Daily News on 07 January 1976 entitled - "12 Youths face 27 sex charges"; newspaper articles (source and date not shown) entitled "Committed sex offences - Two men receive short jail terms", "Pleads guilty to sexual offence; man sentenced to 40-day term", "Two pleaded guilty, jailed for rape"
C-0233	15.01.90	memorandum dated 02 February 1976 to Honourable T. Alex Hickman, Minister of Justice, "Re: Curtis Academy Fire - Arson", from Barry J. Hill, Solicitor
C-0234	16.01.90	copy of letter dated 06 February 1976 to Chief of Police John F. Lawlor, Newfoundland Constabulary, from T. Alex Hickman, Minister of Justice, "Re: Curtis Academy Fire"
C-0235	17.01.90	copy of memorandum dated 31 January 1975 to the Honourable the Minister of Justice from John T. Connors "Re: Hurley and Maher alleged theft of the

Exhibit Number	Date Entered	Description
		vessel, the Shirley Blanche"; memorandum dated 31 January 1975 to John T. Connors from John T. Kelly, Solicitor, "Re: Weir vs. Hurley theft of Shirley Blanche"; memorandum dated 04 February 1975 to Vincent P. McCarthy, Q.C. from T. Alex Hickman "Re: Hurley and Maher - alleged theft of the vessel - Shirley Blanche"; letter dated 21 February 1975 to Aylward, Crosbie & Collins from Vincent P. McCarthy "Re: Michael Maher et.al. alleged theft of motor vessel Shirley Blanche"; memorandum dated 26 June 1975 to the Honourable the Minister of Justice from G.G. Sweezey "Re: The Queen against John Hurley and Michael Maher - theft of the Shirley Blanche Section 294(a) C.C.C."
C-0236	17.01.90	pages 6, 7, 338, 339, 340 and 341 from Martin's Criminal Code, 1975
C-0237	17.01.90	memorandum dated 16 December 1982 to Deputy Minister, Department of Social Services, from (Mrs.) E. P. Noonan "Re: Her Majesty The Queen vs. David Jerome Burton"; with copy of Exhibit C-0209
C-0238	17.01.90	memorandum dated 19 March 1976 to Deputy Minister, Department of Social Services, Attention: F.J. Simms, from

Exhibit Number	Date Entered	Description
		H.J. Buckingham, Solicitor, Department of Justice, "Re: Shane Michael Earle, son of William & Carol Earle, File No. 214-551"
C-0239	17.01.90	record of deposition of Jerome Joseph Corcoran dated 17 January 1990 together with an edited copy of Social Services case record concerning Shane Earle
C-0240	17.01.90	summary of service of Jerome Corcoran
C-0241	17.01.90	record of deposition of Elizabeth Hilda Garland dated 16 January 1990
C-0242	17.01.90	record of deposition of Joan Lorraine Hibbs dated 16 January 1990
C-0243	17.01.90	record of deposition of Christina Marie Murphy dated 16 January 1990
C-0244	17.01.90	record of deposition of Mona Ann Pearce dated 16 January 1990
C-0245	17.01.90	record of deposition of Clyde Cyril Pretty dated 16 January 1990
C-0246	17.01.90	record of deposition of Carol Nellie Prosser dated 16 January 1990
C-0247	17.01.90	record of deposition of Jean Stewart Ryan dated 16 January 1990

Exhibit Number	Date Entered	Description
C-0248	17.01.90	record of deposition of Gayle Allison Sparkes dated 16 January 1990
C-0249	17.01.90	record of deposition of Carolann Mary Wallis dated 16 January 1990
C-0250	18.01.90	copy of memorandum dated 02 October 1969 to Deputy Minister of Justice from George B. Macaulay, Senior Counsel, "Re: Criminal Work"; Minute of Council 827-'70 dated 05 November 1970 concerning appointment of Mr. Vincent P. McCarthy as Deputy Minister of Justice; memorandum dated 28 November 1972 to Honourable Minister of Justice from George B. Macaulay; Minute of Council 161-'73 dated 13 February 1973 concerning executive pay plan; Minute of Council 889-'76 dated 30 March 1976 concerning retroactive salaries to Vincent P. McCarthy and George B. Macaulay; copy of statement made by The Honourable T. Alex Hickman, Q.C., to the House of Assembly on 24 February 1977 concerning appointments of officials in Department of Justice; copy of letter dated 15 September 1979 to the Honourable Gerald R. Ottenheimer from George Macaulay

Exhibit Number	Date Entered	Description
C-0251	18.01.90	memorandum dated 29 April 1975 to Minister of Justice from George B. Macaulay "Re: Motor vessel Shirley Blanche"; memorandum dated 16 August 1976 to Honourable John C. Crosbie, Acting Minister of Justice, from George B. Macaulay "Re: Shirley Blanche"; letter dated 17 August 1976 to Mr. John Hurley from George B. Macaulay "Re: Schooner Shirley Blanche"
C-0252	18.01.90	copy of memorandum dated 24 April 1974 to Deputy Minister of Social Services from George Macaulay
C-0253	19.01.90	profile of Eileen Maloney (deceased)
C-0254	19.01.90	profile of Francis P. McLoughlin
C-0255A	26.01.90	profile of Alexander Luther Moore
C-0256	19.01.90	profile of James W. Ryan
C-0257	19.01.90	deposition of Alastair Murray dated 19 January 1990
C-0258	19.01.90	deposition of Joan Elizabeth Saul dated 16 January 1990
C-0258A	26.01.90	revised cover page for Exhibit C-0258
C-0259	19.01.90	profile of Elizabeth Maud Cook

Exhibit Number	Date Entered	Description
C-0260	19.01.90	volume I of document entitled "Working Relationship between Government of Newfoundland and Labrador (Departments of: Social Services, Justice, Education,, Health) and the Christian Brothers of Ireland in Canada ("Mount Cashel", St. John's, Newfoundland) 1952-1989"
C-0260A	19.01.90	volume II of Exhibit C-0260
C-0260B	22.01.90	copy of letter dated 06 April 1987 to Neil Hamilton from Brother J.B. Lynch, Superintendent of Mount Cashel
C-0260C	31.01.90	copy of letter dated 09 March 1989 to Ms. Sheila Devine from Brother T. Turner
C-0260D	31.01.90	copy of letter dated 17 March 1989 to Brother T. Turner from Sheila Devine
C-0261	22.01.90	profile of Sister Helen Patricia Caule
C-0262	23.01.90	copy of Minute of Council 209-'76 dated 03 March 1976 concerning appointment of John G. Kelly as Director of Public Prosecutions.
C-0263	23.01.90	copy of Minute of Council 310-'77 dated 06 April 1977 concerning appointment of John Kelly as Director of Public Prosecutions

Exhibit Number	Date Entered	Description
C-0264	23.01.90	copy of volume IV/A, pages 329-332, of transcript of in camera evidence given on 10 April 1979 at the "Public Inquiry Into Release and Publication of Police Reports into Fire at Elizabeth Towers, St. John's"
C-0265	23.01.90	document entitled "M/V Shirley Blanche"
C-0266	24.01.90	summary of service of Sheila Devine
C-0267	24.01.90	printed copy of Exhibit C-0267A
C-0267A	24.01.90	overhead transparency captioned "Floor Plan in 1975 for Department of Social Services, Confederation Building"
C-0268	25.01.90	copy of flow chart captioned "Summary of Social Services/Mount Cashel Committee/Board Meetings 1975 to date"
C-0269	25.01.90	copy of 1977 Survey and Recommendations of Newfoundland - Labrador Human Rights Association concerning Children in Foster Care in Newfoundland
C-0270	25.01.90	copy of 1978 Survey and Recommendations of Newfoundland - Labrador Human Rights Association concerning Children in Institutions

Exhibit Number	Date Entered	Description
C-0271	25.01.90	copy of letter dated 02 March 1989 to Neil Hamilton from Peggy Hatcher; letter dated 15 March 1989 to William Cook from Neil Hamilton; letter dated 18 April 1989 to William Cook from Neil Hamilton; memorandum dated 28 April 1989 to Neil Hamilton from William Cook "Re: Child Protection Caseload"
C-0272	25.01.90	copy of letter dated 22 November 1989 to William Cook from Neil Hamilton "Re: Mount Cashel"
C-0273	26.01.90	record of deposition of Linda Hunt Black dated 25 February 1990
C-0274	26.01.90	record of deposition of Betty (Stacey) Lapp dated 19 January 1990
C-0275	26.01.90	record of deposition of Ruth Maureen (Wood) Foster dated 16 January 1990
C-0276	26.01.90	edited cautioned statement dated 19 October 1982 given by (person's name deleted) to Detective Sgt. Leonard P. Power, Royal Newfoundland Constabulary

Exhibit Number	Date Entered	Description
C-0277	26.01.90	edited cautioned statement dated 11 November 1982 given by (person's name deleted) to Detective Sgt. Leonard P. Power, Royal Newfoundland Constabulary
C-0278	26.01.90	document entitled "Newfoundland - Profile of History, Government and Society", dated 26 January 1990
C-0279	29.01.90	profile of Brother Gordon R. Bellows
C-0280	29.01.90	sworn affidavit of Gordon R. Bellows dated 10 November 1982 concerning David Jerome Burton
C-0281A	30.01.90	document entitled "Child Welfare Profiles: No. 01 - The Shane Earle Wardship Proceeding, St. John's, 1976"
C-0281B	20.02.90	supplement to Exhibit C-0281A
C-0282	30.01.90	1975 diary of receipt of mail in Department of Justice Registry from 02 January 1975 to 31 December 1975
C-0282A	30.01.90	copies of selected pages from Exhibit C-0282 covering period 01 December 1975 to 31 December 1975
C-0283	30.01.90	original 1976 diary of receipt of mail in Department of Justice Registry from 02 January 1976 to 31 December 1976

Exhibit Number	**Date Entered**	**Description**
C-0283A	30.01.90	copies of selected pages from Exhibit C-0283 covering period 01 January 1976 to 30 April 1976
C-0284	30.01.90	copy of letter dated 21 April 1976 to Mary Noonan, Department of Justice, from Raymond J. Halley "Re: Carol Baird"; memo dated 21 April 1976 to Deputy Minister of Justice Attention: Mrs. M. Noonan from H. V. Hollett "Re: Francis Strickland - child of Carol Baird, St. John's, File No. 671-152"
C-0285	30.01.90	volume 1, 1977 diary of receipt of mail in Department of Justice Registry from 04 January 1977 to 09 November 1977
C-0285A	30.01.90	volume II, 1977 diary of receipt of mail in Department of Justice Registry from 10 November 1977 to 30 December 1977
C-0285B	30.01.90	copies of selected pages from Exhibit C-0285 covering periods 04 January 1977 to 31 March 1977
C-0286	30.01.90	summary of service of Geraldine M. Stapleton

Exhibit Number	Date Entered	Description
C-0287	31.01.90	copy of an article from The Evening Telegram on 21 January 1990 entitled "Mount Cashel Complaints Still Handled Differently"
C-0288	31.01.90	document entitled "Child Welfare Profiles: No. 02 - The Francis Strickland Baird Wardship Proceeding, St. John's, 1976"
C-0288A	20.02.90	supplement to Exhibit C-0288
C-0288B	21.02.90	document entitled "Typed Version of Handwritten Notes Contained in Exhibit C-0288"
C-0289	02.02.90	document entitled "Newfoundland - Labrador Human Rights Association"
C-0290	02.02.90	book entitled **Human Rights and Social Policy in Newfoundland 1832-1982 Search for a Just Society**, by Stuart R. Godfrey (Harry Cuff Publications Limited, St. John's, Newfoundland, 1985)
C-0291	02.02.90	document entitled "Private and Public Child Welfare in Newfoundland"
C-0292	12.02.90	copy of letter dated 07 June 1976 to Dr. Omesh Kashyap from Raymond J. Halley "Re: Mrs. Carol Baird"

Exhibit Number	Date Entered	Description
C-0293	12.02.90	copy of edited medical history record of (person's name deleted) by Dr. G. Higgins
"S"	12.02.90	unedited document entitled "Child Welfare Profiles: No. 03 - Complaints from Mount Cashel Residents, St. John's, 1982", dated 12 February 1990
C-0294	13.02.90	edited version of Exhibit "S"
C-0294B	23.02.90	amendment to page S00041 to Exhibit C-0294
C-0294C	13.03.90	amendment to page S00042 to Exhibit C-0294
C-0294D	13.03.90	document entitled "Table of Investigations Mentioned in Text of Summary In Exhibit C-0294"
C-0295	15.02.90	summary of service of Frank J. Simms
C-0296	19.02.90	letter dated 09 March 1989 to Superintendent L. Power, Royal Newfoundland Constabulary, from Frank J. Simms
C-0296A	19.02.90	statement dated 21 March 1989 given by Frank John Simms to Superintendent Leonard Power, Royal Newfoundland Constabulary

Exhibit Number	**Date Entered**	**Description**
C-0296B	19.02.90	statement dated 28 June 1989 given by Frank John Simms to Superintendent Leonard Power, Royal Newfoundland Constabulary
C-0297	20.02.90	resume of Madam Justice Mary Elizabeth Noonan
C-0298	21.02.90	copy of transcript of viva voce evidence of John Kelly on 23 January 1990 before the Royal Commission
C-0299	21.02.90	copy of transcript of viva voce evidence of His Honour Judge Robert Hyslop on 13 December 1989 before the Royal Commission
C-0300	21.02.90	copy of 1982 diary for receipt of mail by the Department of Justice Registry for Friday, 26 November 1982
C-0301A	23.02.90	profile of Brother Louis Bucher
C-0302	22.02.90	copy of an article from The Evening Telegram on 20 October 1989 entitled "Earle Testimony Contained Inaccuracies, Distortions Brother Says"
C-0303	23.02.90	summary of service of Ardith (Dunford) Patten
C-0304	26.02.90	profile of George Pope

Exhibit Number	**Date Entered**	**Description**
C-0305	26.02.90	document entitled "Table of Occasions When Allegations Made By Or Regarding Mount Cashel Residents"
C-0306	26.02.90	extract from Department of Social Services field services policy manual (Revision No. 208 - February 1975)
C-0307	26.02.90	profile of Vernon Hollett
C-0308A	12.03.90	profile of Cyril James Goodyear
C-0309	27.02.90	crown prosecutor's case report dated 18 May 1979; notice of application for leave to appeal from sentence; affidavits of service of said application; affidavit of service of said application; letter to Cyril J. Goodyear from W. Michael Roche; letter dated 22 October 1979 to W. Michael Roche from C.J. Goodyear; judgment of the court delivered orally by Gushue, J.A. on 30 November 1979
C-0310	27.02.90	letter dated 04 July 1979 to Magistrate C.J. Goodyear from Magistrate G.W. Seabright
C-0311	28.02.90	summary of service of Sandra Morris
C-0312	28.02.90	summary of service of Sandra Seymour

Exhibit Number	Date Entered	Description
C-0313A	12.03.90	summary of service of Peggy Marjorie Hatcher
C-0314	28.02.90	copy of handwritten notes by Peggy Hatcher dated 01 December 1989 concerning "Boys Being Interviewed on Saturday"
C-0315	01.03.90	summary of service of Patricia Ann Croke
C-0316	01.03.90	document entitled "Statistics for Mount Cashel May 1989 to February 1990", showing Mount Cashel resident population
C-0317	01.03.90	printed copy of Exhibit C-0317A
C-0317A	01.03.90	overhead transparency captioned "Mount Cashel 1990", showing persons participating in coordinating committee and project team
C-0318A	12.03.90	summary of service of Mabel Anderson
C-0319	12.03.90	summary of service of Mary Brothers-Hodder
C-0320	12.03.90	summary of service of Diane Molloy
C-0321	12.03.90	copy of Mount Cashel directive dated 16 May 1989 concerning "Role for Wanda Crocker and Patricia Croke"

Exhibit Number	**Date Entered**	**Description**
C-0322	12.03.90	undated copy of policy directive "Information and Procedures on Reporting Child Abuse" for social workers employed at Mount Cashel Orphanage
C-0323	12.03.90	profile of Brother Timothy Turner
C-0324	12.03.90	document entitled "Adult Staff, Mount Cashel: 1982 to 1989"
C-0325	12.03.90	copy of draft "R.C. School Board for St. John's - Child Abuse Policy and Procedures", dated January 1990
C-0326	12.03.90	summary of service of Terrence Joseph Stapleton
C-0327	13.03.90	report entitled "Child Sexual Abuse Intervention - A Training Program for Child Welfare Practitioners in Newfoundland and Labrador", by J.W. Dickson, Consultant to Child and Family Services, October, 1989
C-0328	13.03.90	profile of Gilbert Pike
C-0329	13.03.90	circular no. 146-'77, Department of Social Services, dated 04 November 1977, "Re: Policy Manual Revision No. 328 - November 1977 (Neglected Children)"

Exhibit Number	Date Entered	Description
C-0330	13.03.90	copy of Exhibit C-0237
C-0331	14.03.90	profile of R. Charles Brett
C-0332	14.03.90	profile of Phyllis Louise Seymour
C-0333	14.03.90	profile of Leonard Patrick J. Power
C-0334A	15.03.90	profile of Zita Margaret Dalton
C-0335	14.03.90	edited document entitled "Criminal Investigation Profiles: No. 01, Royal Newfoundland Constabulary, St. John's, 1989"
C-0336	14.03.90	edited document entitled "Criminal Investigation Profiles: No. 02, Royal Newfoundland Constabulary, St. John's, 1990"
C-0337	15.03.90	edited version of Exhibit "T"
C-0337A	23.11.90	replacement cover page to Exhibit C-0337
C-0338	15.03.90	summary of service of Kenneth Francis LeBreton
C-0339	15.03.90	profile of His Honour Judge W. Michael Roche

Exhibit Number	**Date Entered**	**Description**
"T"	15.03.90	unedited document entitled "Regina versus Ronald Hubert Kelly: Department of Justice File, Corner Brook, 1979"
"T-1"	23.11.90	replacement cover page to Exhibit "T" entitled "Criminal Investigation Profiles No. 03: Ronald Hubert Kelly, Corner Brook, 1979"
C-0340	15.03.90	digest of important cases since 1970, Sentencing in Newfoundland, as edited by Brian Casey, 1988
C-0340A	16.03.90	extracts from Exhibit C-0340
C-0341	20.03.90	summary of service of Murray Donald Urquhart
"U"	20.03.90	copy of unedited version of "Personal Daily Diary and Police Notebook - Entries by Constable Murray Donald Urquhart"
C-0342	20.03.90	edited typed version of Exhibit "U"
C-0343	20.03.90	summary of service of Gerald Gordon Tabor
C-0344	20.03.90	excerpt from the RCMP operations manual dated 29 January 1979 entitled **Child Welfare Act**

Exhibit Number	**Date Entered**	**Description**
C-0345	20.03.90	profile of Mr. Justice John W. Mahoney
C-0346A	22.03.90	summary of service of Jean Wells
C-0347	21.03.90	letter dated 12 March 1990 to David Day, Q.C. from Patrick L. Hamilton "Re: Mrs. Jean Wells - Attendance"
C-0348	21.03.90	copy of page from the daily diary of Ronald Penney for Friday, 12 November 1982
C-0349	21.03.90	document entitled "Volume I - Correspondence and Memoranda Completing the 1975 Mount Cashel Investigation: Efforts by Royal Newfoundland Constabulary, 15 February 1989 to 14 March 1990"
C-0349A	21.03.90	volume II (Contacts/Interviews) of Exhibit C-0349
C-0349B	21.03.90	bar chart dated 21 March 1990 (addition to Exhibit C-0349)
C-0349C	22.03.90	volume III (Criminal Charges) of Exhibit C-0349
C-0350	22.03.90	copy of operational directive No. 1.129 dated 13 November 1985, Royal Newfoundland Constabulary

Exhibit Number	Date Entered	Description
C-0351	22.03.90	undated copy of policy manual - Part 3 - Specialized Investigations - Chapter "A", "Child Abuse", Royal Newfoundland Constabulary
C-0352	22.03.90	memorandum dated 08 June 1983 to all divisions, (Royal Newfoundland Constabulary) from Deputy Chief D. Randell "Re: Transmission of Police Reports to Department of Social Services", together with copy of memorandum dated 02 June 1983 from Robert B. Hyslop, Assistant Director of Public Prosecutions
C-0353	23.03.90	profile of Thomas V. P. Hickey
C-0354	23.03.90	copy of preliminary (unedited) transcript, Newfoundland House of Assembly proceedings, Wednesday, 16 May 1979
C-0355	23.03.90	copy of Government of Newfoundland and Labrador memorandum form dated 31 August 1982 to the Honourable Mr. T.V. Hickey from Stead Crawford (attachment to Exhibit "V")
"V"	23.03.90	unedited copy of letter dated 08 August 1982 to F.J. Simms from Stead Crawford

Exhibit Number	**Date Entered**	**Description**
C-0356	23.03.90	copy of memorandum dated 28 February 1980 to Executive Council (S.S. 6-'80) from T.V. Hickey, Minister of Social Services "Re: Redundant Position, Whitbourne School for Boys"
C-0357	23.03.90	handwritten notes of meeting held at Social Services on 30 January 1984 as made by Sharron Callahan
C-0358A	26.03.90	document entitled "Child Welfare Profiles: No. 04 - Alonzo Corcoran - Marystown/Whitbourne"
C-0359	23.03.90	letter dated 11 August 1983 to Mr. John Legge, Administrator Whitbourne School for Boys from F.J. Simms; letter dated 07 October 1983 to Mr. John Legge from F.J. Simms "Re: Overtime Costs"
C-0360	23.03.90	copy of press release dated 03 February 1984 by Honourable T.V. Hickey, Minister of Social Services
C-0361	23.03.90	memorandum dated 10 November 1983 to Mr. F.J. Simms from Sharron Callahan "Re: The Whitbourne School for Boys"

Exhibit Number	Date Entered	Description
C-0362	23.03.90	notice dated 14 March 1984 under **The Summary Proceedings Act**, from Ronald J. Richard, Associate Deputy Attorney General, directing an inquiry into the sudden death of Alonzo Gerard Corcoran
C-0363	23.03.90	handwritten note dated 27 May 1984 to Mrs. Sharron Callahan from "F.J.S." (F.J. Simms) concerning "Alonzo Corcoran"
C-0364	26.03.90	document entitled "Significant Events Relating to the Judicial Inquiry Into the Death of Alonzo Corcoran"
C-0365	26.03.90	letter dated 02 February 1984 to Mr. G. Pope, Assistant Deputy Minister, Department of Social Services, from F.J. Simms; letter dated 02 February 1984 to Mrs. Sharron Callahan from Roma Bridger; letter dated 08 February 1984 to Ms. Roma Bridger from Sharron Callahan
C-0366	26.03.90	findings and recommendations of Provincial Court Judge G.J. Barnable at the judicial inquiry into the death of Alonzo Corcoran
C-0367	26.03.90	letter dated 31 January 1984 to Frank J. Simms from Brian Miller, Acting Administrator, Whitbourne School for

Exhibit Number	Date Entered	Description
		Boys, together with statements of Maxwell Reid and Thomas M. Hickey
C-0368	27.03.90	volume I of transcript of proceedings at the judicial inquiry into the death of Alonzo Corcoran
C-0368A	27.03.90	volume II of Exhibit C-0368
C-0369	28.03.90	profile of Gordon W. Seabright
C-0370	28.03.90	letter dated 17 June 1977 to Magistrate E.J. Langdon, President Newfoundland Magistrates' Association from George B. Macaulay, Deputy Minister of Justice "Re: Legally Trained Magistrates - Admission to the Bar"; letter dated 09 November 1978 to Magistrate C.J. Goodyear, Chief Magistrate, from G.W. Seabright "Re: Articles"; letter dated 14 November 1979 to Magistrate G.W. Seabright from C.J. Goodyear, Chief Magistrate "Re: Articles"; letter dated 27 June 1979 to Magistrate G. Seabright from C.J. Goodyear, Chief Magistrate; letter dated 28 June 1979 to His Honour Judge Lloyd P. Soper from C.J. Goodyear; letter dated 06 August 1979 to Magistrate G. Seabright from C.J. Goodyear; confidential memorandum dated 03 June 1980 to "Articling Provincial Court Judges and those

Exhibit Number	Date Entered	Description
		Judges who may article in the future" from C.P. Scott; memorandum dated 16 January 1981 to Mrs. Lillian Dingwell, Coordinator of Personnel Services, Department of Justice, from C.P. Scott "Re: Articling - Provincial Court Judges Seabright & Davis"
C-0371	29.03.90	summary of service of Alexander Thomas Kielly
C-0372	29.03.90	summary of service of Freeman J. Twyne
C-0373	30.03.90	profile of Chief Justice Thomas Alexander Hickman
C-0374	30.03.90	edited memorandum dated 12 February 1976 to the Honourable Minister of Justice from J.F. Lawlor "Re: Curtis Academy Fire - Arson"; report dated 10 February 1976 to Chief of Newfoundland Constabulary, J.F. Lawlor from Detective Sgt. Arthur Pike "Re: Communications from Mr. Barry Hill, Solicitor, Department of Justice dated 02 February 1976 concerning the fire at Curtis Academy School"; edited police report dated 10 February 1976 to Chief of Newfoundland Constabulary from Detective R. Hillier "Re: Communication from Mr. Barry Hill,

Exhibit Number	**Date Entered**	**Description**
		Solicitor, Department of Justice dated 02 February 1976 concerning the fire at Curtis Academy School"
C-0374A	22.11.90	edited Newfoundland Constabulary report dated 09 January 1976 by Detective R. Hillier concerning Curtis Academy fire
C-0375	04.04.90	record of deposition of John Cummings dated 06 March 1990
C-0376	04.04.90	record of deposition of Ian Gibson Gray dated 21 March 1990
C-0377	04.04.90	record of deposition of Francis Patrick McLoughlin dated 27 March 1990
C-0378	04.04.90	record of deposition of James Nesbitt dated 23 February 1990
C-0379	04.04.90	record of deposition of Ardith Louise Patten dated 05 March 1990
C-0380A	17.05.90	document entitled "Department of Social Services (Child Welfare Division) Staff - Calendar 1975, 1976"
C-0381	04.04.90	record of deposition of Patricia Bridget Byrne dated 06 February 1990
C-0382	04.04.90	record of deposition of Margaret Catherine Cody dated 06 February 1990

Exhibit Number	**Date Entered**	**Description**
C-0383	04.04.90	summary of service of William Fox (deceased)
C-0384	04.04.90	record of deposition of Beverley Ann Hodder dated 08 February 1990
C-0385	04.04.90	record of deposition of Irene Kean dated 06 February 1990
C-0386	04.04.90	record of deposition of Sheila Marie (Hatch) Murphy dated 08 February 1990
C-0387	04.04.90	record of deposition of Jean Ann Rose dated 09 February 1990
C-0388	04.04.90	record of deposition of Lois Jardine Rowsell dated 11 February 1990
C-0389	04.04.90	record of deposition of Carol (Bartlett) Tobin dated 16 February 1990
C-0390A	17.05.90	document entitled "Mount Cashel Boys Home and Training School - Lay Staff - Calendar 1975, 1976"
C-0391	04.04.90	record of deposition of Dennis Francis Aylward dated 31 March 1990
C-0392	04.04.90	record of deposition of Doris Elizabeth Harte dated 06 March 1990

C-0393	04.04.90	record of deposition of Bride Kinsella dated 06 February 1990
C-0394	04.04.90	record of deposition of Leo Alloysious Mahon dated 07 March 1990
C-0395	04.04.90	record of deposition of Mary Theresa Martin dated 06 March 1990
C-0396	04.04.90	record of deposition of Sarah Sexton dated 05 March 1990
C-0397	04.04.90	record of deposition of Delores Mary Squires dated 06 March 1990
C-0397A	17.05.90	amendment to cover page of Exhibit C-0397
C-0398	04.04.90	record of deposition of Mary Isabelle Whitten dated 07 March 1990
C-0399	04.04.90	record of deposition of Ambrose James McCrowe dated 20 March 1990
C-0400	04.04.90	profile of Vincent Patrick McCarthy (deceased)
C-0401	04.04.90	profile of Alphonsus Edward Faour
C-0402	04.04.90	"note to file" dated 09 June 1989 by A. Faour captioned "1430-208 Shane Earle"
C-0403	04.04.90	memorandum dated 31 March 1990 to Sheila Devine from Elizabeth Crawford

Exhibit Number	Date Entered	Description
C-0404	05.04.90	document entitled "History of Administration of Justice in Newfoundland: 1729 to date"
C-0405	05.04.90	book entitled **Appearing for the Crown - A legal and historical review of criminal prosecutorial authority in Canada**, by Philip C. Stenning (Brown Legal Publications Incorporated, Cowansville, Quebec, 1986)
C-0406	05.04.90	document entitled "Public Hearings: Phase 2 Evidence -Opening Statement (by) D.C. Day, Q.C., Commission co-counsel"
C-0407	05.04.90	series of 6 charts outlining "types of living arrangements of children alleged to have been abused; primary sources of documents generated by allegations of child abuse; filing and storage arrangements for such documents in the Department of Social Services; the district organization of Department of Social Services; filing and storage arrangements for documents generated in the Department of Justice by allegations of child abuse; the Royal Commission's system for cataloguing, filing and storing documents; organizational chart, 1990, for Criminal Investigation Division, Royal Newfoundland Constabulary;

Exhibit Number	Date Entered	Description
		organizational chart, 1990, for Royal Canadian Mounted Police in Newfoundland; and, organizational chart, 1990, for Child Welfare Division, Department of Social Services"
C-0408	05.04.90	excerpts from annual report 1970-71, Department of Social Services
C-0409	05.04.90	excerpts from annual reports 1983-84 to 1987-88, Department of Social Services
C-0410	05.04.90	annual report 1988-89, Department of Social Services
C-0411	05.04.90	document entitled "General Population, Housing, Household, Family and Labour Force Data, 1971 Census of Canada, Census Divisions and Subdivisions - Newfoundland" (Statistics Canada)
C-0412	05.04.90	document entitled "General Population, Housing, Household, Family and Labour Force Data, 1976 Census of Canada - Newfoundland" (Statistics Canada)
C-0413	05.04.90	document entitled "Census Divisions and Subdivisions, Newfoundland, Part 1, 1986" (Statistics Canada)

Exhibit Number	Date Entered	Description
C-0413A	05.04.90	part 2 of Exhibit C-0413
C-0414	05.04.90	Child Welfare policy manual (October 1989), Department of Social Services
C-0415	05.04.90	excerpts from Royal Newfoundland Constabulary policy and procedures manual
C-0415A	12.06.90	amended cover page to Exhibit C-0415 showing title "Royal Newfoundland Constabulary: Policy and Procedures-Volume II Manual 1990"
C-0416	05.04.90	profile of Dr. Teodoro O. Rosales
"W"	05.04.90	unedited document entitled "Child Welfare Profiles: No. 05 - Wardship Proceedings - Gander, St. John's, 1972 - 1978"
C-0417	06.04.90	paper entitled **The Battered Child Syndrome** as contained in Volume 181, No.1, Journal of American Medical Association, July 1962
C-0418	06.04.90	paper entitled "Child Abuse" submitted by C. Rosales to Memorial University of Newfoundland, Extension Services, for nurses' re-entry program

Exhibit Number	Date Entered	Description
C-0419	06.04.90	paper entitled "Child Abuse in Newfoundland - A Review of Cases Presented to the Child Protection Team of the Janeway Child Health Centre - January to June 1980", by Ellen Wood, M.D.
C-0420	06.04.90	reasons for judgment of His Honour Judge Litsky in the Juvenile Court of Calgary, Alberta - "In the Matter of **The Child Welfare Act**, being Chapter 39 of the Revised Statutes of Alberta - 1955, and Amendments thereto; and In the Matter of an alleged neglected child in need of protection, Rita Laurie Dunlop also known as Rita Laurie Ernest"
C-0421	06.04.90	record of deposition of Betty T. Allan dated 05 April 1990
C-0422	09.04.90	edited version of Exhibit "W"
C-0423	09.04.90	document entitled "Child Welfare/Criminal Investigation Profiles: No. 01 - 1985 to 1989"
C-0424	09.04.90	profile of Francis Paul McCarthy
C-0425	09.04.90	profile of Deidre Anne Guilbeault
C-0426	09.04.90	profile of Carolyn Cosgrove

Exhibit Number	Date Entered	Description
C-0427	10.04.90	profile of Michael Joseph Patrick Monaghan
C-0428	10.04.90	profile of Gerard Joseph Martin
C-0429	10.04.90	summary of service of Dean Jeffrey Chaulk
C-0430	10.04.90	profile of Lloyd Alexander Ford
C-0431	10.04.90	profile of Wayne Joseph Penney
C-0432	10.04.90	chart captioned "Organization of Department of Social Services (Wabush District), 1990
C-0433	11.04.90	summary of service of Edward Joseph Coady
C-0434	11.04.90	Agreement between Her Majesty in Right of Newfoundland and the Police Brotherhood of the Royal Newfoundland Constabulary signed on 11 December 1986, expiring 31 October 1987
C-0435	11.04.90	Agreement between Her Majesty in Right of Newfoundland and the Royal Newfoundland Constabulary Association, expiring 30 April 1990
C-0436	30.04.90	profile of John Francis Barron

Exhibit Number	Date Entered	Description
"X"	30.04.90	unedited record of deposition of Roy Joseph O'Brien dated 20 April 1990
C-0437	30.04.90	edited version of Exhibit "X"
C-0438	30.04.90	record of deposition of Roy Joseph O'Brien dated 21 April 1990
C-0439	30.04.90	profile of Cyril Joseph Greene, Q.C.
C-0440	30.04.90	volume I of document entitled "Relationship of Police and Crown Counsel in Criminal Investigations and Prosecutions - Canada"
C-0441	30.04.90	volume II of Exhibit C-0440 (England and Wales)
C-0442	30.04.90	record of deposition of Gilmour G. Sweezey dated 05 February 1990
C-0443	30.04.90	copy of verbatim report of the Thirty Seventh General Assembly of Newfoundland for Tuesday, 30 March 1976 (Volume I, 1st Session, Number 40)
C-0444	02.05.90	record of deposition of Rhoda Pelley dated 28 April 1990

Exhibit Number	Date Entered	Description
C-0445	02.05.90	edited Department of Social Services and Rehabilitation child progress reports dated 05 October 1972 and 09 May 1978 concerning Dereck O'Brien and Roy O'Brien
C-0446	02.05.90	volume I of document entitled "Reporting Information of Child Mistreatment - Legislation, Reports, Circulars, Memoranda, Forms, Statistics, and Guidelines"
C-0446A	02.05.90	volume II of Exhibit C-0446 entitled "Reporting of Information of Child Mistreatment - Summary of records of The Central Recording System of Child Abuse, Child Welfare Division, Department of Social Services, made from 1973 to 1987"
"Y"	02.05.90	unedited document entitled "Child Welfare Profiles: No. 06 - Foster Home Care, Urban Community - 1960 to 1975"
C-0447	02.05.90	edited version of Exhibit "Y"
C-0448	03.05.90	profile of Brother Barry Lynch

Exhibit Number	**Date Entered**	**Description**
"Z"	03.05.90	unedited volume I of document entitled "Child Welfare/ Criminal Investigation Profiles: No. 02 - Rural Community 1972 - 1973; Rural Community and St. John's 1982 - 1984"
"Z.1"	03.05.90	unedited volume II to Exhibit "Z"
C-0449	03.05.90	edited version of Exhibit "Z"
C-0449A	03.05.90	edited version of Exhibit "Z.1"
C-0449B	25.05.90	edited volume III of Exhibit "WW"
C-0450	03.05.90	profile of Dr. Charles Joseph Hutton
C-0451	07.05.90	profile of Mr. Justice Seamus B. O'Regan
C-0452	07.05.90	summary of service of Roy Edison Barbour
C-0453	07.05.90	annual report for the year ended 31 March 1972, Department of Social Services and Rehabilitation
C-0454	07.05.90	summary of service of Frederick Kenneth Powell
"AA"	08.05.90	unedited document entitled "Child Welfare/Criminal Investigation Profiles: No. 03 - St. John's, 1976 - 1982"

Exhibit Number	Date Entered	Description
C-0455	08.05.90	edited version of Exhibit "AA"
C-0456	08.05.90	position description for Deputy Chief of Police (Operations), Royal Newfoundland Constabulary
"BB"	08.05.90	unedited document entitled "Child Welfare Profiles: No. 08 - 1980 - 1981"
C-0457	08.05.90	edited version of Exhibit "BB"
"CC"	08.05.90	unedited document entitled "Child Welfare Profiles: No. 09 - 1972 - 1989"
C-0458	08.05.90	edited version of Exhibit "CC"
C-0458A	09.05.90	supplement to Exhibit C-0458 entitled "Child Welfare Profiles: No. 09 - Intervention and Supervision by Department of Social Services of Child 1 and Child 2"
C-0458B	09.05.90	supplement to Exhibit C-0458 entitled "Child Welfare Profiles: No. 09 - Wardship of Child 1 and Child 2"
"DD"	09.05.90	unedited document entitled "Child Welfare Profiles: No. 10 - 1976 - 1989"
C-0459	09.05.90	edited version of Exhibit "DD"

Appendix R

Exhibit Number	Date Entered	Description
"EE"	09.05.90	unedited document entitled "Child Welfare/Criminal Investigation Profiles: No. 04 - 1978 - 1983"
C-0460	09.05.90	edited version of Exhibit "EE"
"FF"	10.05.90	unedited document entitled "Child Welfare/Criminal Investigation Profiles: No. 05 - 1980 - 1984"
C-0461	10.05.90	edited version of Exhibit "FF"
"GG"	10.05.90	unedited document entitled "Child Welfare/Criminal Investigation Profiles: No. 06 - 1974 - 1979"
C-0462	10.05.90	edited version of Exhibit "GG"
"HH"	10.05.90	unedited document entitled "Child Welfare/Criminal Investigation Profiles: No 07 - 1976 - 1981"
"JJ"	11.05.90	unedited document entitled "Child Welfare/Criminal Investigation Profiles: No. 09 - 1980 - 1981"
C-0463	11.05.90	edited version of Exhibit "JJ"
"KK"	11.05.90	unedited document entitled "Child Welfare/Criminal Investigation Profiles: No. 10 - 1980 - 1982"
C-0464	11.05.90	edited version of Exhibit "KK"

Exhibit Number	Date Entered	Description
"LL"	11.05.90	unedited entitled "Child Welfare/Criminal Investigation Profiles: No. 11 - 1980 - 1985"
C-0465	11.05.90	edited version of Exhibit "LL"
"MM"	14.05.90	unedited document entitled "Child Welfare/Criminal Investigation Profiles: No. 08 - 1980 - 1983"
C-0466	15.05.90	profile of Superintendent Emerson H. Kaiser
C-0467	15.05.90	RCMP flow chart showing the steps from the laying of a complaint by a citizen to the Crown proceeding with prosecution
C-0468	16.05.90	profile of Reverend John Michael Dinn
"NN"	16.05.90	unedited document entitled "Child Welfare Profiles: No. 11 - Guardianship Proceedings - Reciting the Facts -1979"
C-0469	16.05.90	edited version of Exhibit "NN"
"OO"	16.05.90	unedited document entitled "Child Welfare Profiles: No. 12 - Guardianship and Adoption Proceedings - 1979 - 1985"
C-0470	16.05.90	edited version of Exhibit "PP"

Appendix R

Exhibit Number	Date Entered	Description
"PP"	16.05.90	unedited document entitled "Child Welfare Profiles: No. 07 - Guardianship Proceedings - Punctuality - 1980 - 1982"
C-0471	16.05.90	edited version of "PP"
"QQ"	16.05.90	unedited document entitled "Child Welfare/Criminal Investigation Profiles: No. 12 - Improper Placement of Child for Parenting - 1981 - 1982"
C-0472	16.05.90	edited version of Exhibit "QQ"
C-0473	17.05.90	record of deposition of Charles Coffey dated 21 April 1990
"RR"	17.05.90	unedited document entitled "Child Welfare/Criminal Investigation Profiles: No. 13 - 1986 - 1990"
"RR.1"	31.05.90	unedited supplement to Exhibit "RR"
C-0474	17.05.90	edited version of Exhibit "RR"
C-0474A	31.05.90	edited version of Exhibit "RR.1" and supplement to Exhibit C-0474
C-0475	17.05.90	resume of Karen Wanda Alexander
C-0476	22.05.90	profile of Corporal Raymond Wayne Griffith

Exhibit Number	Date Entered	Description
C-0477	22.05.90	portion of map of Newfoundland showing the area of jurisdiction of the Holyrood detachment of the Royal Canadian Mounted Police
C-0478	22.05.90	summary of service of Douglas Murray Hamlyn
C-0479	23.05.90	copy of Royal Canadian Mounted Police Operational Manual Bulletin No. OM-333 concerning "Reporting Requirements", dated 27 March 1987
C-0480	23.05.90	summary of service of Bernadette Mary Myers
"SS"	23.05.90	unedited document entitled "Attempting Placement of the O'Brien Brothers for Adoption, 1973"
C-0481	23.05.90	edited version of Exhibit "SS"
"TT"	23.05.90	unedited document entitled "Child Welfare/Criminal Investigation Profiles: No. 14 - 1973 - 1974"
C-0482	23.05.90	edited version of Exhibit "TT"
C-0483	24.05.90	summary of service of Catherine Michelle Whitten

Exhibit Number	Date Entered	Description
"UU"	24.05.90	unedited document entitled "Child Welfare/Criminal Investigation Profiles: No. 15 - 1974"
C-0484	24.05.90	edited version of Exhibit "UU"
"VV"	24.05.90	unedited document entitled "Child Welfare/Criminal Investigation Profiles: No. 16 - Adoption/Guardianship Proceedings - 1979 - 1981"
C-0485	24.05.90	edited version of Exhibit "VV"
C-0486	25.05.90	profile of Dr. Rufus Dominic
"WW"	25.05.90	unedited volume III of Exhibit "Z" , "Contents of file No. 72-13, Dr. Charles A. Janeway Child Health Centre regarding a female child born 29 May 1969 and died 03 April 1973"
C-0487	25.05.90	copies of **The Summary Jurisdiction Act**, Sections 128-130; **The Summary Proceedings Act**, Newfoundland, and **The Fatality Enquiries Act**, Manitoba
C-0488	28.05.90	profile of Rita Angela Walsh
C-0489	28.05.90	profile of Herbert Alan Vivian

Exhibit Number	Date Entered	Description
C-0490	28.05.90	document entitled "Report on Certain Matters Regarding the Bradbury Report dated 23 October 1975"
C-0491	29.05.90	profile of Gerald Samuel Moore
C-0492	29.05.90	profile of Dr. Brian Murphy
C-0493	29.05.90	copy of edited letter dated 29 June 1989 to Department of Social Services from Dr. B.K. Murphy; letter dated 05 October 1989 to Honourable John Efford, Minister of Social Services from Dr. B.K. Murphy; edited letter dated 30 October 1989 to Honourable John Efford from Dr. B.K. Murphy; letter dated 21 November 1989 to Dr. Brian Murphy from Chris Decker, Minister of Health; edited letter dated 13 December 1989 to Dr. B.K. Murphy from R. John Efford
C-0494	29.05.90	document entitled "Provincial Council of Canada - West Indies Province of Christian Brothers of Ireland -Minutes of Meetings 1969 to 1982; 1989"
C-0495	30.05.90	record of deposition of Brother Dermod Pearce Nash given on 12 May 1990 (version 1)
C-0495A	30.05.90	version 2 of Exhibit C-0495

Exhibit Number	Date Entered	Description
"XX"	30.05.90	volume I of unedited document entitled "Child Welfare/Criminal Investigation Profiles: No. 17 - Institutional Foster Care - Exon House - 1971 - 1988"
C-0496	30.05.90	edited version of Exhibit "XX"
C-0496A	30.05.90	volume II of Exhibit C-0496 (photographs)
"YY"	31.05.90	unedited document entitled "Child Welfare/Criminal Investigation Profiles: No. 18 - Guardianship/ Parenting Proceedings, 1976 - 1978"
C-0497	31.05.90	edited version of Exhibit "YY"
C-0498	31.05.90	profile of Kelvin Eugene Barnes
"ZZ"	31.05.90	unedited document entitled "Child Welfare Profiles: No. 13 - Institutional Foster Care - Waterford Hospital - Girls Home and Training School"
C-0499	31.05.90	edited version of Exhibit "ZZ"
C-0500	31.05.90	summary of service of Ruby Bertha O'Driscoll
"AAA"	01.06.90	unedited summary of adolescent care of Cynthia Muriel Durdle together with unedited related Social Services documentation

Exhibit Number	Date Entered	Description
C-0501	01.06.90	edited version on Exhibit "AAA"
"BBB"	04.06.90	unedited document entitled "Child Welfare/Criminal Investigation Profiles: No. 19 - 1974 - 1990"
C-0502	04.06.90	edited version of Exhibit "BBB"
C-0503	04.06.90	summary of service of Ronald Tizzard
"CCC"	04.06.90	unedited chronological report of events concerning a young male group home resident allegedly being abused
C-0504	04.06.90	edited version of Exhibit "CCC"
"DDD"	04.06.90	unedited material concerning a male group home resident allegedly being abused
C-0505	04.06.90	edited version of Exhibit "DDD"
C-0506	04.06.90	profile of Raymond Anthony Woodrow
C-0507	04.06.90	document entitled - Responding to Allegations of Child Mistreatment; **Sexual Offences Against Children** - Volume I; Report of the Committee on Sexual Offences Against Children and Youth - Chapter 1; Work of the Committee -Chapter 29; Intervention Strategies (Canada, 1984)

Exhibit Number	Date Entered	Description
C-0508	04.06.90	document entitled - Responding to Allegations of Child Mistreatment - Volume II; **Child Sexual Abuse Protocol -Guidelines and Procedures for a Coordinated Response to Child Sexual Abuse in Metropolitan Toronto,** 2nd edition (Toronto, 1986)
C-0509	04.06.90	document entitled - Responding to Allegations of Child Mistreatment - Volume III; **Inter-Ministry Child Abuse Handbook - An Integrated Approach to Child Abuse and Neglect** (British Columbia, 1988 edition)
C-0510	04.06.90	document entitled - Responding to Allegations of Child Mistreatment - Volume IV; **Guidelines for Protecting Child Victims of Abuse and Neglect**, manual in 8 parts (New Brunswick, 1990)
C-0511	05.06.90	material concerning group homes in Newfoundland and in particular St. Francis Foundation Group Home
C-0512	05.06.90	summary of service of Liska Lou Burt
C-0513	05.06.90	profile and summary regarding Gwendolyn Mercer
C-0514	05.06.90	document entitled "Ms. Gwen Mercer - Relevant Documents"

Exhibit Number	Date Entered	Description
C-0514A	06.06.90	letter dated 18 April 1988 to Colin Flynn, Assistant Driector of Crown Prosecutors, from Thomas G. Mills, Crown Attorney "Re: George Pardy Br. Sec. 245(a) CCC File # 88-04490"
C-0515	05.06.90	publication entitled **ABC of Child Abuse**, edited by Roy Meadow (British Medical Journal, London, 1989)
C-0516	05.06.90	compilation of articles written by Gwen Mercer "The Right Action?" "No-Win Abuse" and "Rebirth of Potential Through Courts"
C-0517	06.06.90	summary of service of Shirley Lorraine Quilty
C-0518	06.06.90	summary of service of Donna Christine Earle
"EEE"	07.06.90	unedited volume I of document entitled "Criminal Investigation Profiles: No. 04 - 1985 - 1986"
"FFF"	07.06.90	unedited volume II of Exhibit "EEE"
"GGG"	07.06.90	unedited volume III of Exhibit "EEE"
C-0519	07.06.90	summary of service of Michael Leo Oullette

Exhibit Number	**Date Entered**	**Description**
C-0520	07.06.90	summary of service of Brian Anthony MacLean
C-0521	07.06.90	profile of Paulette Marie Delaney-Smith
C-0522	08.06.90	summary of service of Noel Herbert Nurse
C-0523	11.06.90	summary of service of Terrence Leo Norman
"HHH"	11.06.90	unedited volume IV of Exhibit "EEE"
C-0524	11.06.90	edited version of Exhibit "HHH"
C-0524A	23.11.90	edited version of Exhibit "EEE"
C-0524B	23.11.90	edited version of Exhibit "FFF"
C-0524C	23.11.90	edited version of Exhibit "GGG"
C-0525	12.06.90	document entitled "Royal Newfoundland Constabulary - Policy and Procedures Volume I: Directives, 1977 to 1989 [Excerpts]"
C-0526	12.06.90	profile of Dr. Austin R. Cooper
C-0527	12.06.90	document entitled - Responding to Allegations of Child Mistreatment - Volume V; **A Blueprint for Action; The Report of the Working Group on**

Exhibit Number	Date Entered	Description
		Child Sexual Abuse - (1); The Report (St. John's, Newfoundland, 1986)
C-0528	12.06.90	document entitled - Responding to Allegations of Child Mistreatment - Volume VI; **A Blueprint for Action - The Report of the Working Group on Child Sexual Abuse** - (2); Background papers (St. John's, Newfoundland, 1986)
C-0529	12.06.90	document entitled - Responding to Allegations of Child Mistreatment - Volume VII; **An Inventory of Services and Resources** - The Report of The Working Group on Child Sexual Abuse (St. John's, Newfoundland, 1987)
C-0530	12.06.90	document entitled - Responding to Allegations of Child Mistreatment - Volume VIII; **The Other Side of the Mountain** - Working Together on Domestic Violence Issues, Report I - Summary (Ottawa, December 1988)
C-0531	13.06.90	document entitled "List of Profiles as of 13 June 1990"
"JJJ"	13.06.90	unedited document entitled "Child Welfare Profiles: No. 14 - Group Home Complaint regarding Two School Teachers - 1989 to 1990"

Exhibit Number	**Date Entered**	**Description**
C-0532	13.06.90	edited version of Exhibit "JJJ"
C-0533	13.06.90	document entitled "List of Profiles - Phase 3 as of 13 June 1990"
"KKK"	13.06.90	unedited document entitled "Response to Allegations of Misconduct (Other than Child Mistreatment) - Profiles No. 04 - Allegation of Obtaining Benefits by False Pretenses under **The Social Assistance Act** - 1975 - 1977"
"KKK-1"	23.11.90	replacement cover page to Exhibit "KKK" entitled "Criminal Investigation Profiles No. 05: Allegations of obtaining benefits by false pretenses under the **Social Assistance Act** - 1975 to 1977"
C-0534	13.06.90	edited version of Exhibit "KKK"
C-0534A	23.11.90	replacement cover page to Exhibit C-0534
"LLL"	13.06.90	unedited document entitled "Documents from Records of Roman Catholic Archdiocese of St. John's"
C-0535	13.06.90	edited version of Exhibit "LLL"
C-0536	13.06.90	record of deposition of John Penney as given on 13 October 1989 and 13 June 1990

Exhibit Number	Date Entered	Description
"MMM"	13.06.90	unedited card containing five (5) names with reference to the testimony of John Penney
"NNN"	13.06.90	unedited document entitled "Documents from Records of the Department of Justice (Newfoundland)"
C-0537	13.06.90	edited version of Exhibit "NNN"
C-0538	14.06.90	summary of service of Violette Dorene Ruelokke
C-0539	14.06.90	document entitled "Press Release and Newspaper Excerpts -15 April 1977 to 28 September 1977, regarding Exon House - from records of Association of Registered Nurses of Newfoundland"
C-0540	14.06.90	excerpts from volume I and II of "People and Communities - The Report of a Review and Evaluation of Institutional and Related Community Based Services for Developmentally Delayed Citizens within the Province of Newfoundland and Labrador as presented to the Minister of Social Services, July 1981"
C-0541	14.06.90	working paper entitled "A Plan for the Development of Community Living Arrangements and Related Support Services for Developmentally Delayed

Exhibit Number	Date Entered	Description
		Persons in Newfoundland and Labrador as a Practical Alternative to Institutionalization, January 1982"
C-0542	14.06.90	profile of Samuel Cyril Atkins
C-0543	14.06.90	written submission from the Canadian Mental Health Association, Newfoundland Division
C-0544	14.06.90	written submission from St. John's Status of Women Council
C-0545	14.06.90	written submission from the Newfoundland Association of Social Workers
C-0545A	29.06.90	written submission from School of Social Work, Memorial University of Newfoundland
C-0546	15.06.90	written submission from John W. McGrath
C-0547	15.06.90	written submission from Wayne Dymond
C-0548	15.06.90	written submission from Women's Legal Education and Action Fund (LEAF)
C-0549	15.06.90	written submission from Children In Care Alumni Inc., Winnipeg, Manitoba

Exhibit Number	Date Entered	Description
C-0550	18.06.90	written submission from The Interagency Committee On Violence Against Women
C-0551	18.06.90	written submission from The Provincial Advisory Council on the Status of Women, Newfoundland and Labrador
C-0552	18.06.90	written submission from The Working Group on Child Sexual Abuse
"OOO"	19.06.90	unedited document entitled "Documents from Records of Roman Catholic Archdiocese of St. John's - Parts 2 and 3"
C-0553	19.06.90	edited version of Exhibit "OOO"
C-0554	19.06.90	document entitled "History of Ownership of Property Commonly known as 'Mount Cashel' - 21 January 1875 to date"
C-0555	19.06.90	volume III of document entitled "Relationship of Police and Crown Counsel in Criminal Investigations and Prosecutions - Newfoundland 1989; 1990"
C-0556	19.06.90	document entitled "Interdepartmental Statement on Child Abuse - 05 January 1987"

Exhibit Number	**Date Entered**	**Description**
C-0557	19.06.90	copy of **Children and Family Services Act** (Nova Scotia, 1990)
C-0558	20.06.90	publication entitled **Reaching for Solutions** - The Summary Report of the Special Advisor to the Minister of National Health and Welfare on Child Sexual Abuse in Canada, 1990
C-0558A	20.06.90	publication entitled **Reaching for Solutions** - The Report of the Special Advisor to the Minister of National Health and Welfare on Child Sexual Abuse in Canada, 1990
C-0559	20.06.90	profile of Colin Joseph Flynn
C-0560	20.06.90	copy of Royal Newfoundland Constabulary "Routine Order -Subject: Sexual Offence Unit - Major Crime Section", dated 06 June 1990
C-0561	20.06.90	curriculum vitae of Lillian R. Ulsh
C-0562	20.06.90	curriculum vitae of Mary Wells
C-0563	20.06.90	curriculum vitae of John C. Yuille
C-0564	20.06.90	part I Training Model - Final report (of the) Federal-Provincial Project on Child Abuse Investigations submitted to Federal Department of Justice by Chairperson, Mary Elizabeth Beaton,

Exhibit Number	Date Entered	Description
		Assistant Director of Public Prosecutions - Family Law, Fredericton, New Brunswick
C-0565	20.06.90	report entitled "Interviewing In Child Sexual Abuse Investigations", prepared by John C. Yuille
C-0566	20.06.90	written presentation by Ms. Mary Wells to the Honourable Samuel H.S. Hughes, Commissioner
C-0567	20.06.90	document entitled "Materials filed in support of the Presentation (to the Commissioner) by Mary Wells"
C-0568	20.06.90	publication entitled **What's My Job In Court** - an answer and activity book for kids who are going to court, (Ontario Ministry of the Attorney General, 1989)
C-0569	20.06.90	publication entitled **So You Have To Go To Court**, by Wendy Harvey, LL.B. and Anne Watson-Russell, Ph.D. (Butterworths, Canada, 1986)
C-0570	20.06.90	written submission from the Canadian Civil Liberties Association
C-0571	21.06.90	curriculum vitae of D.A. Rollie Thompson
C-0572	21.06.90	resume of E. Frederick Lynch

Exhibit Number	Date Entered	Description
C-0573	21.06.90	course calendar for September 1989 - June 1990, Newfoundland Public Service Commission
C-0574	21.06.90	document entitled "Public Service Commission Staff Training and Development Division" (Newfoundland)
C-0575	21.06.90	document entitled "Department of Social Services Staff Training and Development Program Outline" (Newfoundland Public Service Commission)
C-0576	21.06.90	document entitled "Atlantic Police Academy - Course Training Standard - Police Science - (Cadet) Program April 1989"
C-0577	21.06.90	document entitled "Course Training Standard - Atlantic Police Academy February 1983 to June 1987 - General Police Science Course II"
C-0578	21.06.90	chapter XXXI of the Course Training Standard from the Justice Institute of British Columbia covering child sexual abuse
C-0579	21.06.90	document entitled "Police Recruit Training Competition Information for Applicants" (prepared by Newfoundland

Exhibit Number	Date Entered	Description
		Public Service Commission and the Royal Newfoundland Constabulary)
C-0580	21.06.90	document entitled "**The New Children and Family Services Act**, Bill 89 - A Guide To The New Act", prepared by Rollie Thompson, Dalhousie Law School
C-0581	21.06.90	document entitled "**Children and Family Services Act** Procedures - An Overview - Investigation and Alternatives to Protection Proceedings" by D.A. Rollie Thompson
C-0582	22.06.90	profile of Melba Rabinowitz
C-0583	22.06.90	profile of Mary Rebecca Clarke
C-0584	22.06.90	profile of George Norbert Lee
C-0585	22.06.90	document entitled "Report of Survey - Submitted to Department of Social Services by the Newfoundland and Labrador Foster Parents Association - 04 May 1989"
C-0586	22.06.90	document entitled "Group Homes Policy and Procedures by Mennonite Central Committee (Canada) - St. John's"

Exhibit Number	Date Entered	Description
C-0587	22.06.90	proposal (undated) by Shalom Incorporated, submitted by Mary R. Clarke, chairperson, to Newfoundland Department of Social Services to establish an extended care home
C-0588	22.06.90	1986-1987 annual report of the Daybreak Parent Child Centre, St. John's, Newfoundland
C-0589	22.06.90	1987-1988 annual report of the Daybreak Parent Child Centre, St. John's, Newfoundland
C-0590	22.06.90	excerpts from **Strengthening Families, Cherishing Children** - a publication by Melba Rabinowitz (The Canadian Association of Toy Libraries and Parents Resource Centres, Ottawa, Ontario, 1989)
C-0591	22.06.90	paper entitled "Services for Children of Battered Wives" by Joan Pennell and Melba Rabinowitz, developed for child abuse conference, St. John's, October 1981
C-0592	22.06.90	book entitled **Within Our Reach - Breaking the Cycle of Disadvantage** - by Elizabeth Schorr with Daniel Schorr (Doubleday, New York, 1988)

Exhibit Number	Date Entered	Description
C-0593	22.06.90	copy of Government of Newfoundland and Labrador advertisement for foster parents as contained in The Evening Telegram on 20 January 1990
C-0594	22.06.90	foster parents handbook, Department of Social Services, entitled "Caring is Sharing"
C-0595	22.06.90	draft proposal dated 17 January 1990 to Department of Social Services by Newfoundland and Labrador Provincial Foster Parents Association to "access funding for operating budget"
C-0596	22.06.90	an example of a foster home agreement dated February 1990 between Newfoundland foster parents and the Director of Child Welfare
C-0597	25.06.90	report entitled **To be on our own with no Direction from Home** - concerning the special needs of youth leaving the care of the child welfare system prepared on behalf of the National Youth In Care Network, by Brian Raychaba, 1988
C-0598	25.06.90	profile of James Joseph Symth
C-0599	25.06.90	profile of Nick Avis
C-0600	25.06.90	profile of William A. Collins

Exhibit Number	**Date Entered**	**Description**
C-0601	25.06.90	profile of Wanda Gail Lundrigan
C-0602	25.06.90	document entitled "Province of Newfoundland and Labrador Department of Justice Adult Corrections Division Victim Impact Statements - Policy and Procedures - May 1990"
C-0603	25.06.90	copy of **An Act Respecting the Establishment of Services for Victims of Crime**, Chapter 56, Statutes of Newfoundland 1988
C-0604	25.06.90	resume of Marilyn McCormack
C-0605	25.06.90	summary of service of Elizabeth Constance Snow
C-0606	25.06.90	profile of Lynn Elizabeth Spracklin
C-0607	26.06.90	profile of Susan McConnell
C-0608	26.06.90	curriculum vitae of Richard J. Morris
C-0609	26.06.90	resume of Jocelyn Denyse Greene
C-0610	26.06.90	document entitled "Certain Royal Canadian Mounted Police Policies and Procedures dealing with Child Abuse" (in Newfoundland)

Exhibit Number	Date Entered	Description
C-0611	26.06.90	document entitled "Questions submitted to The Royal Canadian Mounted Police by Commission Co-counsel" (and written answers)
C-0612	26.06.90	booklet entitled "Royal Canadian Mounted Police Basic Recruit Training - Applied Human Behaviour Course Training Standard"
C-0613	26.06.90	booklet entitled "Royal Canadian Mounted Police Recruit Field Training Program Course Training Standard - Contract"
C-0614	26.06.90	booklet entitled "Royal Canadian Mounted Police In-Service Investigators Course Training Standard"
C-0615	26.06.90	copy of memorandum dated 25 June 1990 to Officer in Charge of Criminal Operations (Royal Canadian Mounted Police) from Chief Reviewer/Analyst concerning "Family Violence and Sexual Assault Related Courses and Workshops"
C-0616	26.06.90	booklet entitled "Royal Canadian Mounted Police Policies and Procedures dealing with Audits and Review"

Exhibit Number	**Date Entered**	**Description**
C-0617	26.06.90	booklet entitled "Royal Canadian Mounted Police - "H" Division - Nova Scotia - Policies and Procedures dealing with child abuse"
C-0618	26.06.90	pamphlet entitled **Public Complaints against the RCMP** (RCMP Communications and Media Relations Directorate, Canada, 1988)
C-0619	26.06.90	handbook entitled **RCMP Member Assistance Program** (RCMP Public Relations Branch, Canada, 1986)
C-0620	27.06.90	written submission from The Advisory Board of The Brother T.I. Murphy Learning Resource Centre (Murphy Centre) -St. John's, Newfoundland
C-0621	27.06.90	record of deposition of Peter Harrington dated 25 June 1990
C-0622	27.06.90	record of deposition of Robert Bradbury dated 26 June 1990
C-0623	29.06.90	affidavit dated May 1990 filed by Crown Prosecutor, Cathy Knox, in the Supreme Court of Newfoundland, Court of Appeal, outlining the status of the criminal prosecutions arising from Mount Cashel Orphanage police investigations

Exhibit Number	Date Entered	Description
C-0624	29.06.90	profile of Rix G. Rogers
"PPP"	29.06.90	unedited document entitled "Child Welfare Profiles: No. 15 - Foster Home Care for Handicapped Children - 1971 -1988"
C-0625	29.06.90	unedited document entitled "Legal Opinions and Other Communications to Department of Social Services from Department of Justice relating to Child Welfare, Corrections and other matters, 1974 - 1985"
C-0626	29.06.90	volume I and II of a report dated March 1987 entitled "External Review into Matters Relating to the System of Dealing with Child Abuse in Winnipeg - Final Report"
C-0627	03.07.90	record of deposition of Senator Gerald Ottenheimer, Q.C. as taken on 28 and 29 June 1990
C-0628	03.07.90	edited version of Exhibit "PPP"
C-0629	03.07.90	edited version of Exhibit C-0625
C-0630	10.12.90	edited version of Exhibit "V"
C-0631	10.12.90	edited version of Exhibit "HH"
C-0632	10.12.90	edited version of Exhibit "MM"

Appendix S

Persons who provided depositions to the Royal Commission

Appendix S

Name	Affiliation	Date Entered
Allan, Betty T.	former employee, Mount Cashel Orphanage	06 April 1990
Aylward, Dennis Francis	former employee, Mount Cashel Orphanage	04 April 1990
Black, Linda (Hunt)	former solicitor, Department of Justice, Newfoundland	26 January 1990
Bradbury, Robert Barry	former employee, Department of Social Services, Newfoundland	27 June 1990
Byrne, Patricia Bridget	former employee, Department of Social Services, Newfoundland	04 April 1990
Cody, Margaret Catherine	employee, Department of Social Services, Newfoundland	04 April 1990
Coffey, Charles	former resident, Mount Cashel Orphanage	21 April 1990
Corcoran, Jerome Joseph	former member, Royal Newfoundland Constabulary	17 January 1990
Cummings, John	solicitor, Department of Justice, Newfoundland	04 April 1990
Foster, Ruth Maureen (Wood)	former employee, Department of Justice, Newfoundland	26 January 1990
Garland, Elizabeth Hilda	employee, Department of Justice, Newfoundland	17 January 1990
Gray, Ian Gibson	former solicitor, Department of Justice, Newfoundland	04 April 1990

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Name	**Affiliation**	**Date Entered**
Harrington, Peter	former director of Consumer Social Action Centre; former editor of a monthly newspaper called The Town Crier, St. John's, Newfoundland	27 June 1990
Harte, Doris Elizabeth	employee, Mount Cashel Orphanage	04 April 1990
Hibbs, Joan Lorraine	former employee, Department of Justice, Newfoundland	17 January 1990
Hodder, Beverly Ann	former employee, Department of Social Services, Newfoundland	04 April 1990
Jardine-Rowsell, Lois	former employee, Department of Social Services, Newfoundland	04 April 1990
Kean, Irene	former employee, Department of Social Services, Newfoundland	04 April 1990
Kinsella, Bride	former employee, Mount Cashel Orphanage	04 April 1990
Lapp, Betty (Stacey)	former employee, Department of Justice, Newfoundland	26 January 1990
Mahon, Leo Alloysious	employee, Mount Cashel Orphanage	04 April 1990
Martin, Mary Theresa	former employee, Mount Cashel Orphanage	04 April 1990
McCrowe, Ambrose James	former employee, Department of Social Services, Newfoundland; former employee Mount Cashel Orphanage	04 April 1990
McLoughlin, Francis Patrick	former solicitor, Department of Justice, Newfoundland	04 April 1990
Murphy, Christina Mary	former employee, Department of Justice, Newfoundland	17 January 1990

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Name	**Affiliation**	**Date Entered**
Murphy, Sheila Marie (Hatch)	employee, Department of Social Services, Newfoundland	04 April 1990
Murray, Allastair	former solicitor, Department of Justice, Newfoundland	19 January 1990
Nash, Brother Dermod Pearce	former superintendent, Mount Cashel Orphanage	29 May 1990 30 May 1990
Nesbitt, James	former solicitor, Department of Justice, Newfoundland	04 April 1990
O'Brien, Roy Joseph	former resident of foster homes in Newfoundland and Mount Cashel Orphanage	30 April 1990
Ottenheimer, Senator Gerald Ryan	former minister, Department of Justice, Newfoundland	03 July 1990
Patten, Ardith Louise (Dunford)	former employee, Department of Justice, Newfoundland	04 April 1990
Pearce, Mona Ann	employee, Department of Justice, Newfoundland	17 January 1990
Pelley, Rhoda	private citizen	02 May 1990
Penney, John	former resident, Mount Cashel Orphanage	13 June 1990
Pretty, Clyde Cyril	former employee, Department of Justice, Newfoundland	17 January 1990
Prosser, Carol Nellie	employee, Department of Justice, Newfoundland	17 January 1990
Rose, Jean Ann	employee, Department of Social Services, Newfoundland	04 April 1990
Ryan, Jean (Stewart)	former employee, Department of Justice, Newfoundland	17 January 1990

Appendix S

Name	**Affiliation**	**Date Entered**
Saul, Joan Elizabeth	employee, Department of Justice, Newfoundland	19 January 1990
Sexton, Sarah	former school teacher, Mount Cashel Orphanage	04 April 1990
Sparkes, Gayle Allison	former employee, Department of Justice, Newfoundland	17 January 1990
Squires, Delores Mary	employee, Mount Cashel Orphanage	04 April 1990
Sweezey, Gilmour G.	former solicitor, Department of Justice, Newfoundland	30 April 1990
Tobin, Carol (Bartlett)	employee, Department of Social Services, Newfoundland	04 April 1990
Wallis, Carolann Mary	employee, Department of Justice, Newfoundland	17 January 1990
Whitten, Mary Isabelle	former employee, Mount Cashel Orphanage	04 April 1990